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सं. 21]

नई दिल्ली, मई 17—मई 23, 2009, शनिवार/वैशाख 27—ज्येष्ठ 2, 1931

No. 21]

NEW DELHI, MAY 17—MAY 23, 2009, SATURDAY/VAISAKHA 27—JYAISTHA 2, 1931

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

गृह मंत्रालय

नई दिल्ली, 12 मई, 2009

का.आ. 1316.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, गृह-मंत्रालय के निम्नलिखित कार्यालयों में हिन्दी का कार्यसाधक ज्ञान रखने वाले कर्मचारियों की संख्या 80% से अधिक हो जाने के फलस्वरूप उन्हें एतद्वारा अधिसूचित करती है:—

केन्द्रीय रिजर्व पुलिस बल

कार्यालय पुलिस उप महानिरीक्षक, द्रुत कार्य बल, केन्द्रीय रिजर्व पुलिस बल, नवी मुम्बई

सीमा सुरक्षा बल

- (1) 1033 तोपखाना रेजीमेंट, सीमा सुरक्षा बल ।
- (2) सेक्टर मुख्यालय, सीमा सुरक्षा बल, पानीसागर ।
- (3) सेक्टर मुख्यालय, सीमा सुरक्षा बल, रजौरी ।
- (4) मुख्यालय विशेष महानिदेशक (पूर्व), 20/1 गुरुसदाय रोड, कोलकाता-19

(5) 1044 तोपखाना रेजीमेंट, सीमा सुरक्षा बल ।

(6) मुख्यालय, मिजोरम एवं कछार फ्रंटियर, सीमा सुरक्षा बल, सिलचर ।

(7) सेक्टर मुख्यालय (अवरोध रोधी), सीमा सुरक्षा बल, बगाफा ।

(8) सेक्टर मुख्यालय, सीमा सुरक्षा बल, सिलचर ।

भारत के महारजिस्ट्रार का कार्यालय

जनगणना कार्य निदेशालय, छत्तीसगढ़ कैम्प: जनगणना भवन, अरेरा हिल्स, जेल रोड, भोपाल-462004

[सं. 12017/1/2008-हिन्दी]

अवधेश कुमार मिश्र, निदेशक (राजभाषा)

MINISTRY OF HOME AFFAIRS

New Delhi, the 12th May, 2009

S.O. 1316.—In pursuance of sub rule (4) of Rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following offices of the Ministry of Home Affairs where the percentage of Hindi knowing staff has gone above 80% :—

CENTRAL RESERVE POLICE FORCE

Office of the Dy Inspector General of Police, Rapid Action Force, Central Reserve Police Force, Navi Mumbai.

Border Security Force

- (1) 1033 Artillery Regiment, Border Security Force.
- (2) Sector HQ, Border Security Force, Panisagar.
- (3) Sector HQ, Border Security Force, Rajouri.
- (4) HQ Special DG (East) 20/I Gurusaday Road, Kolkata-19
- (5) 1044 Artillery Regiment, Border Security Force.
- (6) HQ M&C Frontier, Border Security Force, Silchar.
- (7) Sector HQ (Anti-Insurgency), Border Security Force, Bagafa.
- (8) Sector HQ, Border Security Force, Silchar.

Office of the Registrar General, India

Directorate of Census Operations, Chhattisgarh, Camp: Jaganana Bhawan, Arera Hills, Jail Road, Bhopal-462004

[No.12017/1/2008-Hindi]

AVADHESH KUMAR MISHRA, Director (OL)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 12 मई, 2009

का.आ. 1317.—राष्ट्रीयकृत बैंक (प्रबन्ध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खण्ड 3 के उप खण्ड (1) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा (3) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री संजीव जिंदल, उप सचिव, वित्त मंत्रालय, वित्तीय सेवाएं विभाग, नई दिल्ली को तत्काल प्रभाव से और अगला आदेश होने तक श्री संजय सिंह के स्थान पर यूनाइटेड बैंक ऑफ इंडिया के निदेशक मंडल में निदेशक के रूप में नामित करती है।

[फा.सं. 9/7/2007-बीओ-1]

जी. बी. सिंह, उप सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 12th May, 2009

S.O. 1317.—In exercise of the powers conferred by clause (b) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, read with sub-clause (1) of clause 3 of the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, hereby nominates Shri Sanjeev Jindal, Deputy Secretary, Ministry of Finance, Department of Financial Services,

New Delhi as a Director on the Board of Directors of United Bank of India with immediate effect and until further orders vice Shri Sanjay Singh.

[F.No. 9/7/2007-BO.I]

G. B. SINGH, Dy. Secy.

नई दिल्ली, 12 मई, 2009

का.आ. 1318.—भारतीय स्टेट बैंक (अनुषंगी बैंक) अधिनियम, 1959 की धारा 25 की उपधारा (1) के खण्ड (ड.) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा नीचे दी गई सारणी के कालम (2) में विनिर्दिष्ट व्यक्तियों को, उक्त सारणी के कालम (3) में विनिर्दिष्ट व्यक्तियों के स्थान पर, इसके कालम (1) में विनिर्दिष्ट बैंकों के निदेशक के रूप में, तत्काल प्रभाव से और अगला आदेश होने तक नामित करती है:—

सारणी

1	2	3
स्टेट बैंक ऑफ पटियाला	श्री आर के सूद, अवर सचिव, वित्तीय सेवाएं विभाग।	डॉ. ए. भट्टाचार्य
स्टेट बैंक ऑफ मैसूर	श्री डी डी माहेश्वरी अवर सचिव वित्तीय सेवाएं विभाग	श्री एम. के. मल्होत्रा

[फा.सं. 9/7/2007-बीओ-1]

जी. बी. सिंह, उप सचिव

New Delhi, the 12th May, 2009

S.O. 1318.—In exercise of the powers conferred by clause (e) of sub-section (1) of Section 25 of the State Bank of India (Subsidiary Banks) Act, 1959, the Central Government, hereby nominates the persons specified in column 2 of the table below as Directors of the Banks specified in column 1 thereof in place of the persons specified in column 3 of the said table, with immediate effect and until further orders:—

TABLE

1	2	3
State Bank of Patiala	Shri R.K. Sood, Under Secretary Department of Financial Services	Dr. A. Bhattacharya
State Bank of Mysore	Shri D. D. Maheshwari Under Secretary Department of Financial Services	Shri M. K. Malhotra

[F.No. 9/7/2007-BO.-I]

G. B. SINGH, Dy. Secy.

नई दिल्ली, 13 मई, 2009

का.आ. 1319.—भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) की धारा 19 के खंड (ड.) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री अशोक चावला, वित्त सचिव, वित्त मंत्रालय, नई दिल्ली को तत्काल प्रभाव से तथा अगले आदेशों तक, भारतीय स्टेट बैंक के केन्द्रीय निदेशक मण्डल में, श्री अरुण रामानाथन के स्थान पर निदेशक के रूप में नामित करती है।

[फा. सं. 9/9/2009-बीओ-1]

जी. बी. सिंह, उप सचिव

New Delhi, the 13th May, 2009

S.O. 1319.—In exercise of the powers conferred by clause (e) of section 19 of the State Bank of India Act, 1955 (23 of 1955), the Central Government, hereby nominates Shri Ashok Chawla, Finance Secretary, Ministry of Finance, New Delhi as a Director on the Central Board of State Bank of India with immediate effect and until further orders vice Shri Arun Ramanathan.

[F. No. 9/9/2009-BO-1]

G. B. SINGH, Dy. Secy.

नई दिल्ली, 14 मई, 2009

का.आ. 1320.—जीवन बीमा निगम अधिनियम, 1956 (1956 का 31) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री अशोक चावला, वित्त सचिव, वित्त मंत्रालय, को तत्काल प्रभाव से और अगले आदेशों तक, श्री अरुण रामानाथन के स्थान पर उक्त निगम में सदस्य के रूप में नामित करती है।

[फा. सं. 14/3/2003-बीमा-III]

ललित कुमार, उप सचिव

New Delhi, the 14th May, 2009

S.O. 1320.—In exercise of the powers conferred by Section 4 of the Life Insurance Corporation Act, 1956 (31 of 1956), the Central Government hereby appoints Shri Ashok Chawla, Finance Secretary, Ministry of Finance as Member of the said Corporation vice Shri Arun Ramanathan with immediate effect till further orders.

[F. No. 14/3/2003-Ins.-III]

LALIT KUMAR, Dy. Secy.

नई दिल्ली, 14 मई, 2009

का.आ. 1321.—जीवन बीमा निगम अधिनियम, 1956 (1956 का 31) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री जी.सी. चतुर्वेदी, अपर सचिव, वित्त मंत्रालय, वित्तीय सेवाएं विभाग, नई दिल्ली को तत्काल प्रभाव से और अगले आदेशों तक, श्रीमती सिंधुश्री खुल्लर, सचिव, युवा कार्य के स्थान पर उक्त निगम में सदस्य के रूप में नामित करती है।

[फा. सं. 14/3/2003-बीमा-III]

ललित कुमार, उप सचिव

New Delhi, the 14th May, 2009

S.O. 1321.—In exercise of the powers conferred by Section 4 of the Life Insurance Corporation Act, 1956 (31 of 1956), the Central Government hereby appoints Shri G.C. Chaturvedi, Additional Secretary, Department of Financial Services, Ministry of Finance as Member of the said Corporation vice Smt. Sindhushree Khullar, Secretary, Youth Affairs with immediate effect till further orders.

[F. No. 14/3/2003-Ins.-III]

LALIT KUMAR, Dy. Secy.

(केन्द्रीय प्रत्यक्ष कर बोर्ड)

नई दिल्ली, 13 मई, 2009

का.आ. 1322.—सर्वसाधारण की जानकारी के लिए एतद्वारा यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा आयकर नियमावली, 1962 (उक्त नियमवली) के नियम, 5ग और 5ड. के साथ पठित आयकर अधिनियम, 1961 (उक्त अधिनियम) की धारा 35 की उप-धारा (1) के खंड (iii) के प्रयोजनार्थ दिनांक 1-4-2000 से संगठन इन्स्टीट्यूट फार ह्यूमन डेवलपमेंट, नई दिल्ली को निम्नलिखित शर्तों के अधीन आंशिक रूप से अनुसंधान कार्यकलापों में संलग्न 'अन्य संस्था' की श्रेणी में अनुमोदित किया गया है। नामतः—

(i) अनुमोदित संगठन को प्रदत्त राशि का उपयोग सामाजिक विज्ञान के लिए किया जाएगा;

(ii) अनुमोदित संगठन अपने संकाय सदस्यों अथवा इसके नामांकित छात्रों के माध्यम से सामाजिक विज्ञान अथवा सांख्यिकीय अनुसंधान करेगा;

(iii) अनुमोदित संगठन वैज्ञानिक अनुसंधान के लिए इसके द्वारा प्राप्त राशि के संबंध में अलग खाता-बही रखेगा जिसमें अनुसंधान करने के लिए प्रयुक्त राशि दर्शाई गई हो, उक्त अधिनियम की धारा 288 की उप-धारा (2) के स्पष्टीकरण में यथा परिभाषित किसी लेखाकार से ऐसी खाता-बही की लेखा परीक्षा कराएगा और उक्त अधिनियम की धारा 139 की उप-धारा (1) के अंतर्गत आय की विवरणी प्रस्तुत करने की नियत तिथि तक ऐसे लेखाकार द्वारा विधिवत सत्यापित एवं हस्ताक्षरित लेखा परीक्षा रिपोर्ट के मामले में क्षेत्राधिकार रखने वाले आयकर आयुक्त अथवा आयकर निदेशक को प्रस्तुत करेगा;

(iv) अनुमोदित संगठन सामाजिक विज्ञान के लिए प्राप्त दान तथा प्रयुक्त राशि का अलग विवरण रखेगा और उपर्युक्त लेखा परीक्षा रिपोर्ट के साथ लेखा परीक्षक द्वारा विधिवत सत्यापित विवरण की प्रति प्रस्तुत करेगा।

2. केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि अनुमोदित संगठन:-

(क) पैराग्राफ I के उप-पैराग्राफ (iii) में उल्लिखित अलग लेखा बही नहीं रखेगा; अथवा

(ख) पैराग्राफ I के उप-पैराग्राफ (iii) में उल्लिखित अलग लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करेगा; अथवा

(ग) पैराग्राफ 1 के उप-पैराग्राफ (iv) में उल्लिखित सामाजिक विज्ञान अथवा सांख्यिकीय अनुसंधान के लिए प्राप्त दान एवं प्रयुक्त राशि का अपना विवरण प्रस्तुत नहीं करेगा; अथवा

(घ) अपना अनुसंधान कार्य कलाप करना बंद कर देगा अथवा इसके अनुसंधान कार्य कलाप को जायज नहीं पाया जाएगा; अथवा

(ङ) उक्त नियमावली के नियम 5ग और 5ड के साथ पठित उक्त अधिनियम की धारा 35 की उप-धारा (1) के खंड (iii) के उपबंधों के अनुरूप नहीं होगा तथा उनका पालन नहीं करेगा।

[अधिसूचना सं. 43/2009/फा. सं. 203/53/2002-आ.क.नि.-II]

पदम सिंह, अवर सचिव

(Central Board of Direct Taxes)

New Delhi, the 13th May, 2009

S.O. 1322.—It is hereby notified for general information that the organization Institute for Human Development, New Delhi has been approved by the Central Government for the purpose of clause (iii) of sub-section (1) of section 35 of the Income Tax Act, 1961 (said Act), read with rules 5C and 5E of the Income-Tax Rules, 1962 (said Rules) with effect from 1-4-2000 in the category of 'other Institution' partly engaged in research activities subject to the following conditions, namely :—

(i) The sums paid to the approved organization shall be utilized for research in social sciences;

(ii) The approved organization shall carry out research in social science of statistical research through its faculty member or its enrolled students;

(iii) The approved organization shall maintain separate books of accounts in respect of the sums received by it for scientific research, reflect therein the amounts used for carrying out research, get such books audited by an accountant as defined in the explanation to sub-section (2) of Section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-Tax or the Director of Income-Tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of Section 139 of the said Act;

(iv) The approved organization shall maintain a separate statement of donations received and amounts applied for research in social sciences and a copy of such

statement duly certified by the auditor shall accompany the report of audit referred to above.

2. The Central Government shall withdraw the approval if the approved organization:—

(a) fails to maintain **separate** books of accounts referred to in sub-paragraph (iii) of paragraph 1; or

(b) fails to furnish its audit report referred to in sub-paragraph (iii) of paragraph 1; or

(c) fails to furnish its statement of the donations received and sums applied for research in social sciences or statistical research referred to in sub-paragraph (iv) of paragraph 1; or

(d) ceases to carry on its research activities or its research activities are not found to be genuine; or

(e) ceases to conform to and comply with the provisions of clause (iii) of sub-section (1) of Section 35 of the said Act, read with rules 5C and 5E of the said Rules.

[Notification No. 43/2009/F.No.203/53/2002/ITA-II]

PADAM SINGH, Under Secy.

नई दिल्ली, 13 मई, 2009

का.आ. 1323.— सर्वसाधारण की जानकारी के लिए एतद्वारा यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा आयकर नियमावली, 1962 (उक्त नियमावली) के नियम 5ग और 5घ के साथ पठित आयकर अधिनियम, 1961 (उक्त अधिनियम) की धारा 35 की उप-धारा (1) के खंड (ii) के प्रयोजनार्थ दिनांक 1-4-2003 से संगठन टी रिसर्च एशोसिएशन, कोलकाता को निम्नलिखित शर्तों के अधीन आंशिक रूप से अनुसंधान कार्यकलापों में लगी 'वैज्ञानिक अनुसंधान संघ' की श्रेणी में अनुमोदित किया गया है, नामतः :—

(i) अनुमोदित 'वैज्ञानिक अनुसंधान संघ' का एक मात्र उद्देश्य वैज्ञानिक अनुसंधान करना होगा;

(ii) अनुमोदित संगठन स्वयं वैज्ञानिक अनुसंधान कार्य-कलाप जारी रखेगा;

(iii) अनुमोदित संगठन बही-खाता रखेगा तथा उक्त अधिनियम की धारा 288 की उप-धारा (2) के स्पष्टीकरण में यथा परिभाषित किसी लेखाकार से ऐसी खाता-बही की लेखा परीक्षा कराएगा और उक्त अधिनियम की धारा 139 की उप-धारा (1) के अंतर्गत आय की विवरणी प्रस्तुत करने की नियत तिथि तक ऐसे लेखाकार द्वारा विधिवत सत्यापित

एवं हस्ताक्षरित लेखा परीक्षा रिपोर्ट मामले में क्षेत्राधिकार रखने वाले आयकर आयुक्त अथवा आयकर निदेशक को प्रस्तुत करेगा।

- (iv) अनुमोदित संगठन वैज्ञानिक अनुसंधान के लिए प्राप्त दान तथा प्रयुक्त राशि का अलग विवरण रखेगा और उपर्युक्त लेखा परीक्षा रिपोर्ट के साथ लेखा परीक्षक द्वारा विधित सत्यापित विवरण की प्रति प्रस्तुत करेगा।

2. केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि अनुमोदित संगठन :-

- (क) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित अलग लेखा बही नहीं रखेगा; अथवा
- (ख) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित अपनी लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करेगा; अथवा
- (ग) पैराग्राफ 1 के उप-पैराग्राफ (iv) में उल्लिखित वैज्ञानिक अनुसंधान के लिए प्राप्त दान एवं प्रयुक्त राशि का अपना विवरण प्रस्तुत नहीं करेगा; अथवा
- (घ) अपना अनुसंधान कार्य कलाप करना बंद कर देगा अथवा इसके अनुसंधान कार्य कलाप को जायज नहीं पाया जाएगा; अथवा
- (ङ) उक्त नियमावली के नियम 5ग और 5घ के साथ पठित उक्त अधिनियम की धारा 35 की उपधारा (1) के खंड (ii) के प्रावधानों के अनुरूप नहीं होगा तथा उनका पालन नहीं करेगा।

[अधिसूचना सं. 42/2009/फा. सं. 203/41/2005-आ.क.नि.-II]
पदम सिंह, अवर सचिव

New Delhi, the 13th May, 2009

S.O. 1323.—It is hereby notified for general information that the organization Tea Research Association, Kolkata has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of Section 35 of the Income-tax Act, 1961 (said Act), read with rules 5C and 5D of the Income-tax Rules, 1962 (said Rules) with effect from 1-4-2003 in the category of 'scientific research association' subject to the following conditions, namely:-

- (i) The sole objective of the approved 'scientific research association' shall be to undertake scientific research;
- (ii) The approved organization shall carry on the scientific research activity by itself;

- (iii) The approved organization shall maintain books of accounts and get such books audited by an accountant as defined in the explanation to sub-section (2) of Section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of Section 139 of the said Act;

- (iv) The approved organization shall maintain a separate statement of donations received and amounts applied for scientific research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.

2. The Central Government shall withdraw the approval if the approved organization:-

- (a) fails to maintain books of accounts referred to in sub-paragraph (iii) of paragraph 1; or
- (b) fails to furnish its audit report referred to in sub-paragraph (iii) of paragraph 1; or
- (c) fails to furnish its statement of the donations received and amounts applied for scientific research referred to in sub-paragraph (iv) of paragraph 1; or
- (d) ceases to carry on its research activities or its research activities are not found to be genuine; or
- (e) ceases to conform to and comply with the provisions of clause (ii) of sub-section (1) of Section 35 of the said Act, read with rules 5C and 5D of the said Rules.

[Notification No. 42/2009/F. No. 203/41/2005/ITA-II]
PADAM SINGH, Under Secy.

विदेश मंत्रालय

(सीपीबी प्रभाग)

नई दिल्ली, 5 मई, 2009

का.आ. 1324.—राजनयिक और कौंसिलीय ऑफिसर (शपथ और फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में, केन्द्र सरकार एतद्वारा श्री विजय सिंह चौहान, सहायक को 5-5-2009 से भारत के राजदूतावास, ब्राटिस्लावा में

सहायक कौंसुलर अधिकारी के कर्तव्यों का पालन करने के लिए प्राधिकृत करती है।

[सं. टी. 4330/1/2006]

आर. के. पेरिन्डिया, अवर सचिव (कौंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(CPV Division)

New Delhi, the 5th May, 2009

S.O. 1324.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948, the Central Government hereby authorize Shri Vijay Singh Chauhan, Assisatant to perform the duties of Assistant Consular Officer in the Embassy of India, Bratislava with effect from 5th May, 2009.

[No. T. 4330/1/2006]

R. K. PERINDIA, Under Secy. (Consular)

वाणिज्य एवं उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 20 अप्रैल, 2009

का.आ. 1325.—यतः केन्द्रीय सरकार का यह मत है कि श्री जे. के. सिंह, संयुक्त विदेश व्यापार महानिदेशक से संबंधित विभागीय जाँच के प्रयोजनार्थ श्री इरफान सैयद, श्री हारून रज्जाक छाया, श्री नूर मुहम्मद मिया मुहम्मद टेलर और श्री कौशिक मजूमदार को साक्षियों के रूप में बुलाना आवश्यक है।

2. अतः अब विभागीय जाँच (साक्षियों को हाजिर कराना तथा दस्तावेजों को पेश कराना) अधिनियम, 1972 (1972 का 18) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार श्री जे. के. सिंह, संयुक्त विदेश व्यापार महानिदेशक से संबंधित विभागीय जाँच के संबंध में श्री अमिताभ जैन, अपर विदेश व्यापार महानिदेशक को उक्त अधिनियम की धारा 5 में विनिर्दिष्ट शक्ति का प्रयोग करने के लिए एतद्वारा जाँच प्राधिकारी के रूप में प्राधिकृत करती है।

[सं. सी. 13011/10/2005-सतर्कता]

ए. के. लाहिड़ी, उप सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 20th April, 2009

S.O. 1325.—Whereas the Central Government is of opinion that for the purposes of the Departmental Inquiry relating to Shri J.K. Singh, Jt. DGFT it is necessary to summon as witnesses Shri Irfan Saiyyed, Shri Haroon

Razzaq Chhaya, Shri Noor Muhammad Miya Muhmmad Tailor and Shri Kaushik Majumdar.

2. Now therefore, in exercise of the powers conferred by sub-section (1) of Section 4 of the Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1972 (18 of 1972), the Central Government hereby authorizes Shri Amitabh Jain, Additional Director General of Foreign Trade (Addl. DGFT) as the Inquiring Authority to exercise the power specified in Section 5 of the said Act in relation to the Departmental Inquiry in respect of Shri J.K. Singh, Jt. DGFT.

[No. C-13011/10/2005-Vig]

A. K. LAHIRI, Dy. Secy.

नागर विमानन मंत्रालय

(ए ए आई खण्ड)

नई दिल्ली, 15 मई, 2009

का.आ. 1326.—भारतीय विमानपत्तन आर्थिक विनियामक प्राधिकरण अधिनियम, 2008 (2008 की सं.-27) की धारा-9 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्वारा श्री संदीप प्रकाश, भारतीय राजस्व सेवा (सी एंड सीई : 90) के अधिकारी, निदेशक, नागर विमानन मंत्रालय, नई दिल्ली को दिनांक 15-05-2009 (पूर्वाह्न) से दिनांक 31-08-2011 तक अथवा अगले आदेशों तक, जो भी पहले हो, 37,400-67,000 रु. (ग्रेड वेतन 10000 रु. प्रति माह) के वेतनमान के साथ पे बैंड-4 में सचिव, विमानपत्तन आर्थिक विनियामक प्राधिकरण (एईआरए) के पद पर नियुक्त करती है।

[फा. सं. एवी-20036/61/2008-एएआई]

ओमा नंद, अवर सचिव

MINISTRY OF CIVIL AVIATION

(AAI Section)

New Delhi, the 15th May, 2009

S.O. 1326.—In exercise of the powers conferred by sub-section (1) of Section 9 of the Airports Economic Regulatory Authority of India Act, 2008 (27 of 2008) the Central Government hereby appoints Shri Sandeep Prakash, IRS (C&CE : 90), Director Ministry of Civil Aviation, New Delhi, to the post of Secretary, Airports Economic Regulatory Authority (AERA) in Pay Band 4 with scale of pay Rs. 37,400-67,000 (Grade Pay Rs. 10,000 p.m.) w.e.f. 15-05-2009 (FN) till 31-08-2011 or until further orders, whichever is the earliest.

[F. No. AV. 20036/61/2008-AAI]

OMA NAND, Under Secy.

राष्ट्रीय आपदा प्रबंधन प्राधिकरण

नई दिल्ली, 20 अप्रैल, 2009

का.आ. 1327.—सूचना का अधिकार अधिनियम, 2005 के खण्ड 5(1) तथा पूर्व समसंख्यक अधिसूचना दिनांक 9 अगस्त, 2007 के आंशिक संशोधन की शर्तों के अनुसार, राष्ट्रीय आपदा प्रबंधन प्राधिकरण (एनडीएमए) के निम्नलिखित अधिकारियों को उनके नाम के आगे उल्लिखित विशेष विषयों वाले मामलों के संबंध में एतद्वारा केन्द्रीय जन सूचना अधिकारी (सीपीआईओ) तथा अपील प्राधिकारी के रूप में पदनामित किया जाता है :—

क्रम सं.	केन्द्रीय जन-सूचना अधिकारी का नाम	अपील प्राधिकारी का नाम	विषय
1.	श्री आर. के. चोपड़ा, अवर सचिव (प्रशा.)	श्री प्रेम कुमार, उप सचिव (प्रशा.)	प्रशासनिक अनुभाग से संबंधित सभी मामले ।
2.	श्री चन्द्र शेखर, अवर सचिव (सामान्य एवं समन्वय कार्य)	श्री प्रेम कुमार, उप सचिव (प्रशा.)	सामान्य एवं समन्वय कार्य अनुभाग से संबंधित सभी मामले ।
3.	श्री बुध राम, सहायक वित्तीय सलाहकार	श्री अजय रमेश सुले, संयुक्त सलाहकार (प्रशमन)	वित्त प्रभाग से संबंधित सभी मामले ।
4.	श्री महेन्द्र प्रताप, सहायक सलाहकार (नीति, योजना एवं दिशानिर्देश)	श्री सी.वी. धर्म राव, संयुक्त सलाहकार (नीति, योजना एवं दिशानिर्देश)	नीति, योजना एवं दिशानिर्देश से संबंधित सभी मामले ।
5.	श्री जे.सी. बाबू, सहायक सलाहकार (पुनर्वास एवं समुत्थान)	श्री सी.वी. धर्म राव, संयुक्त सलाहकार (नीति, योजना एवं दिशानिर्देश)	पुनर्वास एवं समुत्थान से संबंधित सभी मामले ।
6.	श्री ए.के. जैन, सहायक सलाहकार (प्रशमन परियोजनाएँ, एनडीआरएफ एवं मॉक अभ्यास)	श्री अजय रमेश सुले, संयुक्त सलाहकार (प्रशमन)	प्रशमन परियोजनाएँ, एनडीआरएफ एवं मॉक अभ्यास से संबंधित सभी मामले ।
7.	श्री एस. के. प्रसाद सहायक सलाहकार (प्रशमन परियोजनाएँ एवं अधिप्राप्ति)	श्री अजय रमेश सुले, संयुक्त सलाहकार (प्रशमन)	प्रशमन परियोजनाएँ एवं अधिप्राप्ति से संबंधित सभी मामले ।
8.	श्रीमती विजयलक्ष्मी भारद्वाज, सहायक सलाहकार (चेतना सृजन, सूचना एवं जन-संपर्क कार्य)	श्री आर. के. सिंह, संयुक्त सलाहकार	चेतना सृजन, सूचना एवं जन-संपर्क कार्य से संबंधित सभी मामले ।
9.	श्री पी. ठाकुर, सहायक सलाहकार (क्षमता निर्माण, प्रशिक्षण एवं नागरिक रक्षा)	श्री आर. के. सिंह, संयुक्त सलाहकार	क्षमता निर्माण, प्रशिक्षण एवं नागरिक रक्षा से संबंधित सभी मामले ।

[सं. 6-13/2007-प्रशा.]

चन्द्र शेखर, अवर सचिव

NATIONAL DISASTER MANAGEMENT AUTHORITY

New Delhi, the 20th April, 2009

S.O. 1327.—In terms of Section 5(1) of the Right to Information Act, 2005, and in partial modification of earlier Notification of even number dated the 9th August, 2007 issued on the subject matter, the following officers of National Disaster Management Authority (NDMA) are hereby designated as Central Public Information Officers (CPIOs) and Appellant Authority in respect of the specific subject matters mentioned against their names :—

Sl. No.	Name of the CPIO	Name of the Appellant Authority	Subject
1	2	3	4
1.	Shri. R.K. Chopra, Under Secretary (Admn.)	Shri Prem Kumar Dy. Secretary (Admn.)	All matters relating to administration Section.

1	2	3	4
2.	Shri Chandra Shekhar, Under Secretary (G&C)	Shri Prem Kumar, Dy. Secretary (Admn.)	All matters relating to General & Coordination Section.
3.	Shri Budh Ram, Asstt. Financial Advisor	Shri Ajay Ramesh Sule, Joint Advisor (Mitigation)	All matters relating to Finance Division.
4.	Shri Mahendra Pratap, Asstt. Advisor (Policies, Plan & Guidelines)	Shri C.V. Dharma Rao, Joint Advisor (Policy, Plan & Guidelines)	All matters relating to Policy, plan and Guidelines.
5.	Shri J.C. Babu, Asstt. Advisor (Rehabilitation and Recovery)	Shri C.V. Dharma Rao, Joint Advisor (Policy, Plan & Guidelines)	All matters relating to Rehabilitation and Recovery.
6.	Shri A.K. Jain, Asstt. Advisor (Mitigation Projects, NDRF & Mock Exercise)	Shri Ajay Ramesh Sule, Joint Advisor (Mitigation)	All matters relating to Mitigation Projects, NDRF and Mock Exercise.
7.	Shri S.K. Prasad Asstt. Advisor (Mitigation Projects & Procurement)	Shri Ajay Ramesh Sule, Joint Advisor (Mitigation)	All matters relating to Mitigation Projects and Procurement.
8.	Smt. Vijaylakshmi Bhardwaj, Asstt. Advisor (Awareness Generation, Information & Public Relations)	Shri R.K. Singh, Joint Advisor	All matters relating to Awareness Generation, Information and Public relations.
9.	Shri P. Thakur, Asstt. Advisor (Capacity Building, Training and Civil Defence).	Shri R.K. Singh, Joint Advisor	All matters relating to Capacity Building, Training and Civil Defence.

[No. 6-13/2007-Admn.]

CHANDRA SHEKHAR, Under Secy.

खान मंत्रालय

नई दिल्ली, 12 मई, 2009

का.आ. 1328.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, खान मंत्रालय के अधीनस्थ कार्यालय भारतीय खान ब्यूरो की इकाई अयस्क प्रसाधन प्रयोगशाला, अजमेर, जिसके 80 प्रतिशत से अधिक कर्मचारीवृंद ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

2. यह अधिसूचना राजपत्र में प्रकाशन की तारीख से प्रवृत्त होगी।

[सं. ई-17011/1/2006-हिन्दी]

अजिता बाजपेयी पाण्डे, संयुक्त सचिव

MINISTRY OF MINES

New Delhi, the 12th May, 2008

S.O. 1328.—In pursuance of sub-rule (4) of rule 10 of the Official Language (Use for Official Purpose of the Union) Rules, 1976 the Central Government hereby notifies the Ore Dressing Laboratory a unit of Indian Bureau of Mines where more than 80% staff have acquired the working knowledge of Hindi.

2. This notification shall come into force from the date of publication in the Official Gazette.

[No. E-17011/1/2006-Hindi]

AJITA BAJPAI PANDE. Jt. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

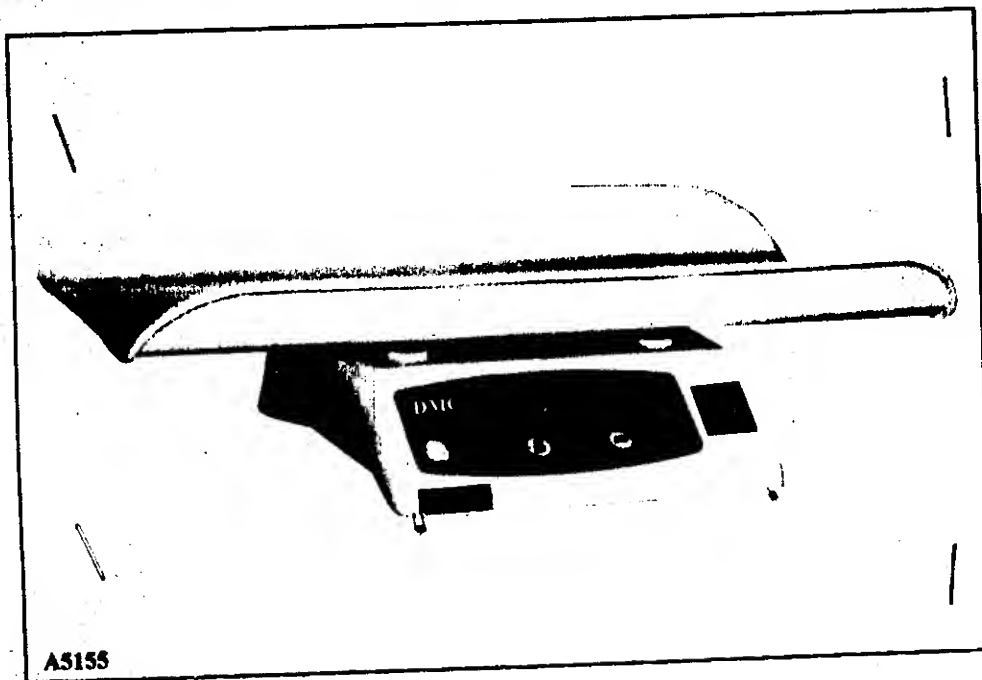
(उपभोक्ता मामले विभाग)

नई दिल्ली, 8 अप्रैल, 2009

का.आ. 1329.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) और उपधारा (8) द्वारा शक्तियों का प्रयोग करते हुए मैसर्स दिव्या मार्केटिंग कंपनी, मजार के पीछे, रिंग रोड, गोंडिया (महाराष्ट्र) द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग III) वाले "डीएमसी-बी" शृंखला के अंकक सूचन सहित, अस्वचालित तोलन उपकरण (बेबी तोलन मशीन) के मॉडल का, जिसके ब्रांड का नाम "डी एम सी" है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिन्ह आई एन डी/09/08/617 समनुदेशित किया गया है, अनुमोदन प्रमाण-पत्र जारी करती है।

उक्त मॉडल विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (बेबी तोलन प्रकार) है। इसकी अधिकतम क्षमता 30 कि.ग्रा. है और न्यूनतम क्षमता 100 ग्रा. है। सत्यापन मापमान अंतराल (ई) 5 ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यवकलनात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एल ई डी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



मॉडल को सीलिंग करने के प्रावधान का योजनाबद्ध डायग्राम

कपटपूर्ण व्यवहारों के लिए खोले जाने से रोकने के लिए स्टाम्पिंग प्लेट पर सीलिंग प्वाइंट स्थित किया जाता है। इंडीकेटर की बाड़ी के अंदर पॉट है और पॉट को अनुकूल करने के लिए बाड़ी पर कोई छेद नहीं है। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

और केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 5 ग्रा. या उससे अधिक के "ई" मान के लिए 500 से 10,000 तक के रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और "ई" मान $1 \times 10^*$, $2 \times 10^*$, $5 \times 10^*$, के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21 (244)/2008]

आर. माथुरबूथम, निदेशक, विधिक माप विज्ञान

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

New Delhi, the 8th April, 2009

S.O. 1329.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the Model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of the Model of non-automatic weighing instrument (Baby Weighing Machine) with digital indication of medium accuracy (Accuracy class-III) of Series "DMC-B" and with brand name "DMC" (hereinafter referred to as the said model), manufactured by M/s. Divya Marketing Co. Behind Mazar, Ring Road, Gondia (Maharashtra) and which is assigned the approval mark IND/09/08/617;

The said model is a strain gauge type load cell based non-automatic weighing instrument (Baby Weighing Machine) with a maximum capacity of 30kg and minimum capacity of 100g. The verification scale interval (e) is 5g. It has a tare device with a 100 per cent subtractive retained tare effect. The Light Emitting Diode (LED) Display indicates the weighing result. The instrument operates on 230 Volts and 50 Hertz alternative current power supply.

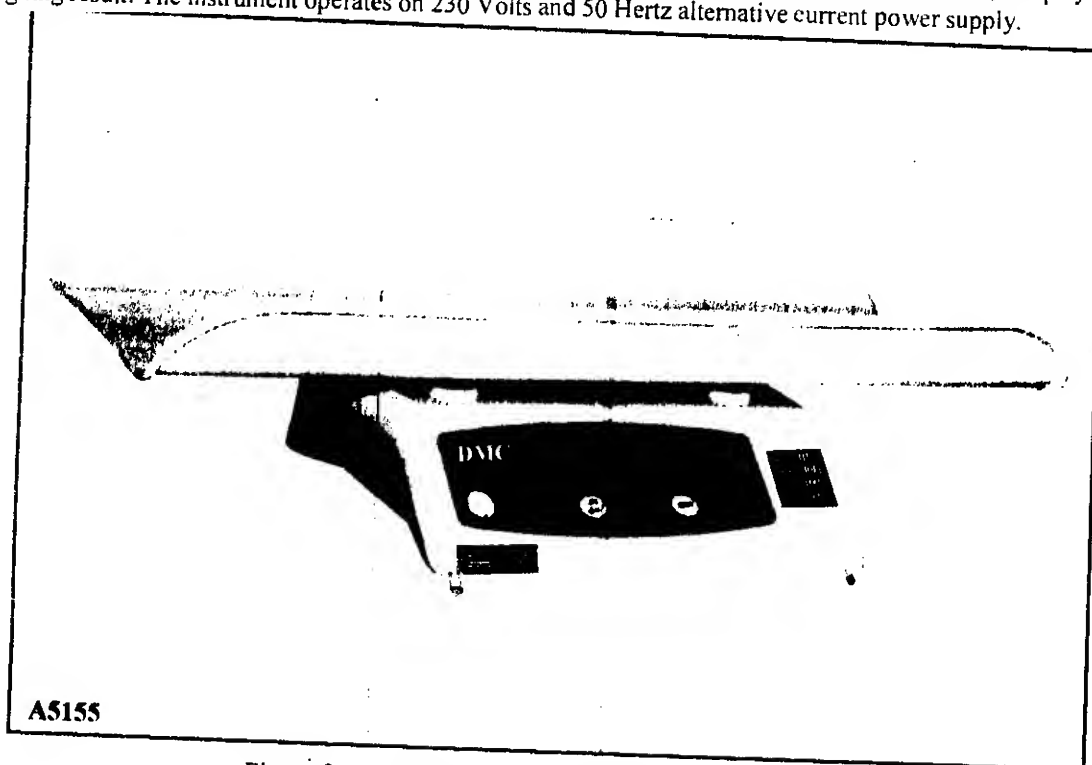


Figure-2 : Sealing diagram of the sealing provision of the model

Sealing is done through the hole, made in the bottom plate and top cover of the scale, and then sealing wire is passed through these two holes, Stamping plate is connected through sealing wire passing from the body of the scale with lead seal, to get the stamping. A typical schematic diagram of sealing provision of the model is given above.

Further, in exercise of the powers conferred by sub-section (12) of Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity upto 50kg with verification scale interval (n) in the range of 500 to 10,000 for 'e' value of 5g or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved model has been manufactured.

[F. No. WM-21 (244)/2008]

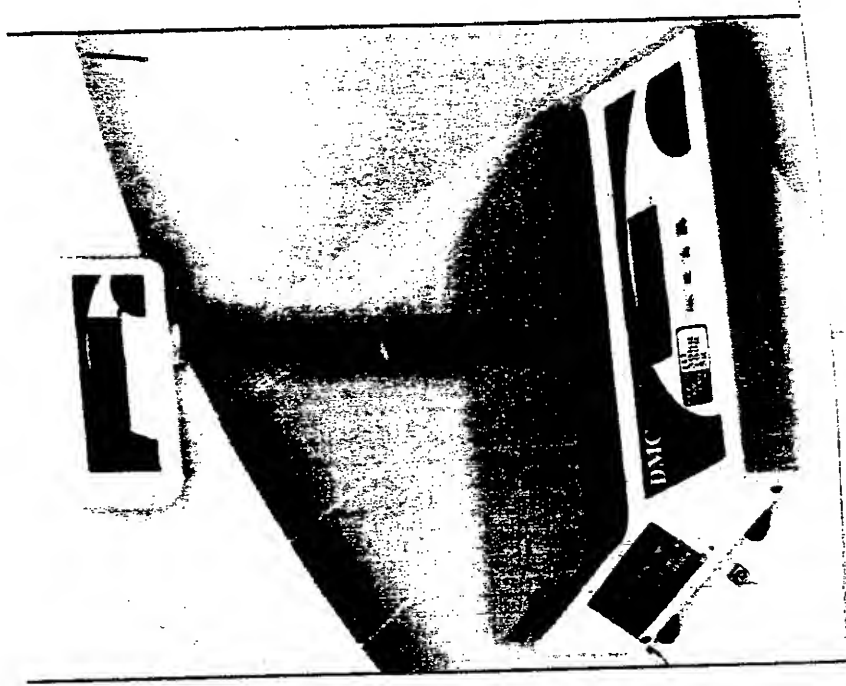
R. MATHURBOOTHAM, Director of Legal Metrology

नई दिल्ली, 8 अप्रैल, 2009

फा.आ. 1330.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) और उपधारा (8) द्वारा शक्तियों का प्रयोग करते हुए मैसर्स दिव्या मार्केटिंग कंपनी, मजार के पीछे, रिंग रोड, गोंडिया (महाराष्ट्र) द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग III) वाले “डीएमसीटी-II” श्रृंखला के अंकक सूचन सहित, अस्वचालित तोलन उपकरण (टेबल टाप टाइप) के मॉडल का, जिसके ब्रांड का नाम “डी एम सी” है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिन्ह आई एन डी/09/08/618 समनुदेशित किया गया है, अनुमोदन प्रमाण-पत्र जारी करती है।

उक्त मॉडल विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (टेबल टाप टाइप) है। इसकी अधिकतम क्षमता 30 कि.ग्रा. है और न्यूनतम क्षमता 100 ग्रा. है। सत्यापन मापमान अंतराल (ई) 5 ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यवकलनात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एल ई डी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट, और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



मॉडल को सीलिंग करने के प्रावधान का योजनाबद्ध डायग्राम

कपटपूर्ण व्यवहारों के लिए खोले जाने से रोकने के लिए स्टाम्पिंग प्लेट पर सीलिंग प्वाइंट स्थिर किया जाता है। इंडीकेटर की बाड़ी के अंदर पॉट है और पॉट को अनुकूल करने के लिए बाड़ी पर कोई छेद नहीं है। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

और केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी श्रृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 100 मि. ग्रा. से 2 ग्रा. तक के “ई” मान के लिए 100 से 10,000 तक के रेंज में सत्यापन मापमान अंतराल (एन) 5 ग्रा. या उससे अधिक के “ई” मान के लिए 500 से 10,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. की अधिकतम क्षमता वाले हैं और “ई” मान 1×10^3 , 2×10^3 , 5×10^3 , के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू.एम-21 (244)/2008]

आर. माथुरब्रध्म, निदेशक, विधिक माप विज्ञान

New Delhi, the 8th April, 2009

S.O. 1330.—Whereas the Central Government, after considering the report submitted to it by prescribed authority, is satisfied that the Model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of the Model of non-automatic weighing instrument (Table top type) with digital indication of medium accuracy (Accuracy class-III) of Series "DMCT-II" and with brand name "DMC" (hereinafter referred to as the said model), manufactured by M/s. Divya Marketing Co. B/H, Mazar, Ring Road, Gondia (Mah) which is assigned the approval mark IND/09/08/618;

The said model is a strain gauge type load cell based non-automatic weighing instrument (Table top type) with a maximum capacity of 30kg. and minimum capacity of 100g. The verification scale interval (e) is 5g. It has a tare device with a 100 per cent subtractive retained tare effect. The Light Emitting Diode (LED) display indicates the weighing result. The instrument operates on 230 Volts and 50 Hertz alternative current power supply.

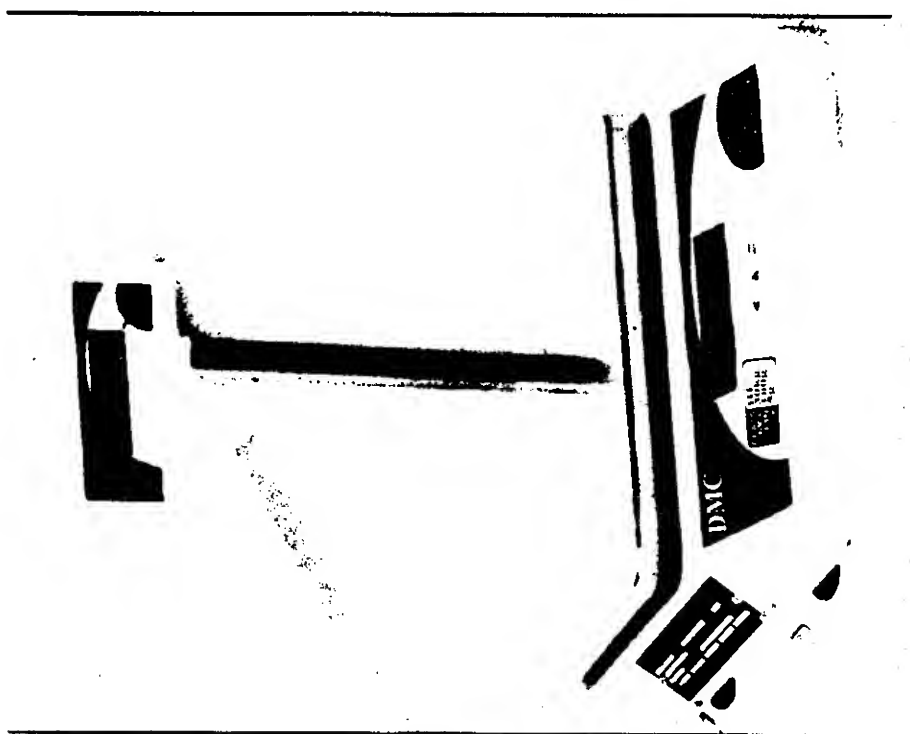


Figure-2 : Schematic diagram of the sealing provision of the model

Sealing point is affixed on the stamping plate to avoid fraudulent use. The trim pot is inside the body and no hole is provided on the body for adjusting the pot. A typical schematic diagram of sealing provision of the model is given above.

Further, in exercise of the powers conferred by sub-section (12) of Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity upto 50kg. with verification scale interval (n) in the range of 100 to 10,000 for 'e' value of 100mg. to 2 g. and with verification scale interval (n) in the range of 500 to 10,000 for 'e' value of 5g. or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved model has been manufactured.

[F.No. WM-21 (244)/2008]

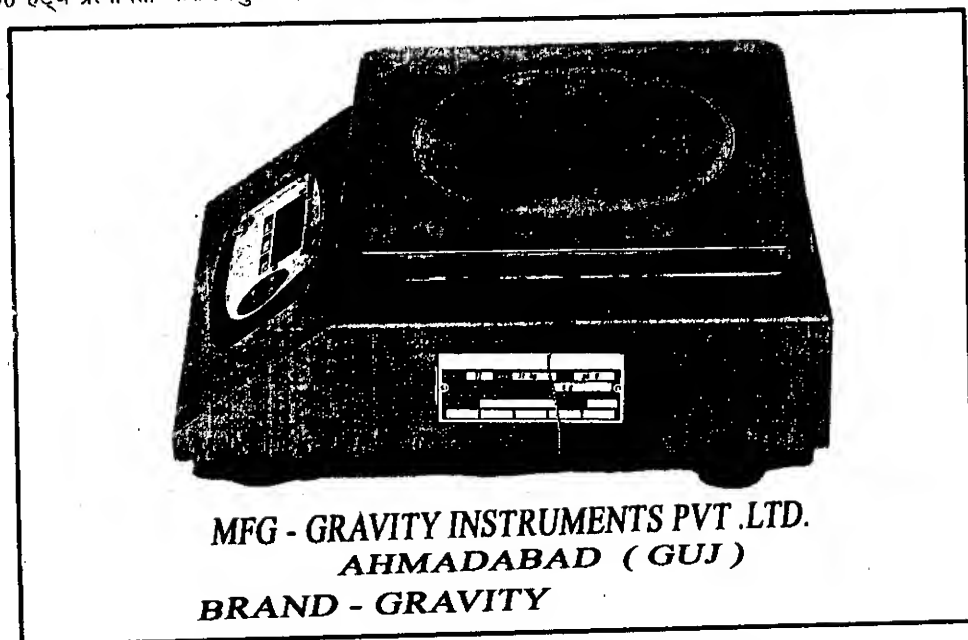
R. MATHURBOOTHAM, Director of Legal Metrology

नई दिल्ली, 8 अप्रैल, 2009

का.आ. 1331.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) और उपधारा (8) द्वारा शक्तियों का प्रयोग करते हुए मैसर्स ग्रेविटी इंस्ट्रुमेंट्स प्रा.लि., ई-12/ए, हेवन पार्क के पास, शरणम-11, रामदेवनगर, वेजलपुर, अहमदाबाद-380 015 द्वारा विनिर्मित उच्च यथार्थता (यथार्थता वर्ग II) वाले "जीटी-51" शृंखला के अंकक सूचन सहित, अस्वचालित तोलन उपकरण (टेबलटाप प्रकार) के मॉडल का, जिसके ब्रांड का नाम "GRAVITY" है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिन्ह आई एन डी/09/09/173 समनुदेशित किया गया है, अनुमोदन प्रमाण पत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (टेबलटाप प्रकार) है। इसकी अधिकतम क्षमता 11 कि.ग्रा. है और न्यूनतम क्षमता 50 ग्रा. है। सत्यापन मापमान अंतराल (ई) 1 ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यवकलनात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एल ई डी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



आकृति-2 मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम

स्टाम्प और सीलिंग के सत्यापन के लिए तुला के पिछली तरफ अपर कवर और तल प्लेट में काट कर दो छेद किए गए हैं और इन दोनों छेदों को लीड वायर से कसा गया है। उपकरण को सील से छेड़छाड़ किए बिना नहीं खोला जा सकता। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

उपकरण में केलिब्रेशन के लिए बाहरी पहुंच है। बाहरी केलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 1 मि. ग्रा. से 50 मि.ग्रा. तक के "ई" मान के लिए 100 से 50,000 तक के रेंज में सत्यापन मापमान अंतराल (एन) और 100 मि.ग्रा. या उससे अधिक के "ई" मान के लिए 5000 से 50,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और "ई" मान 1×10^3 , 2×10^3 , 5×10^3 , के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21 (73)/2009]

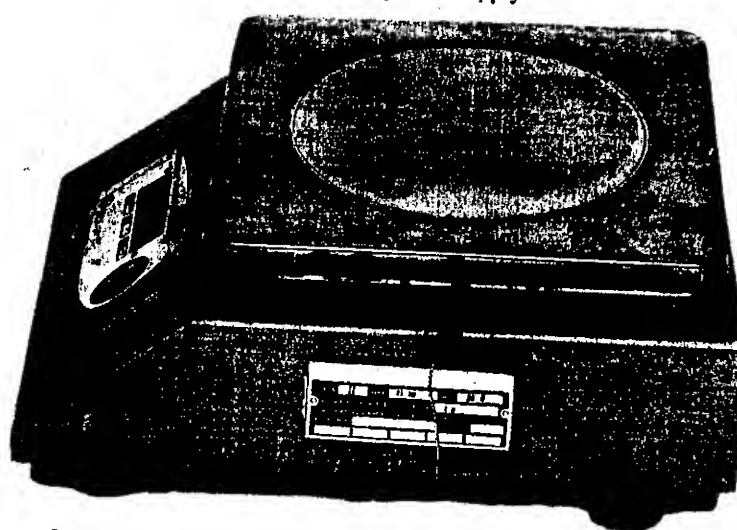
आर. माधुरवृथम, निदेशक, विधिक माप विज्ञान

New Delhi, the 8th April, 2009

S.O. 1331.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the Model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said Model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of the Model of non-automatic weighing instrument (Table top type) with digital indication of high accuracy (Accuracy class-II) of Series "GT-51" and with brand name "GRAVITY" (hereinafter referred to as the said Model), manufactured by M/s. Gravity Instruments Pvt. Ltd., E/12A, Nr. Hevan Park, Sharanam-II, Ramdevnagar, Vejalpur, Ahmedabad-380 015 which is assigned the approval mark IND/09/09/173;

The said Model is a strain gauge type load cell based non-automatic weighing instrument (Table top type) with a maximum capacity of 11kg. and minimum capacity of 50g. The verification scale interval (e) is 1g. It has a tare device with a 100 per cent subtractive retained tare effect. The Light Emitting Diode (LED) display indicates the weighing result. The instrument operates on 230 Volts, 50 Hertz alternative current power supply.



**MFG - GRAVITY INSTRUMENTS PVT. LTD.
AHMADABAD (GUJ)
BRAND - GRAVITY**

Figure-2 : Schematic diagram of sealing provision of the Model

From the back side of the weighing scale two holes are made by cutting the upper cover and bottom plate and fastened by a leaded wire through these two holes for receiving the verification stamp and seal. The weighing scale can not be opened without tampering the seal. A typical schematic diagram of sealing provision of the Model, given above.

The instrument has external control to calibration. A dip switch has also been provided in A/D card/mot. or board to disable access to external calibration.

Further, in exercise of the powers conferred by sub-section (12) of Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said Model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity upto 50kg. with verification scale interval (n) in the range of 100 to 50,000 for 'e' value of 1mg. to 50 mg. and with verification scale interval (n) in the range of 5000 to 50,000 for 'e' value of 100mg. or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved Model has been manufactured.

[F. No. WM-21 (73)/2009]

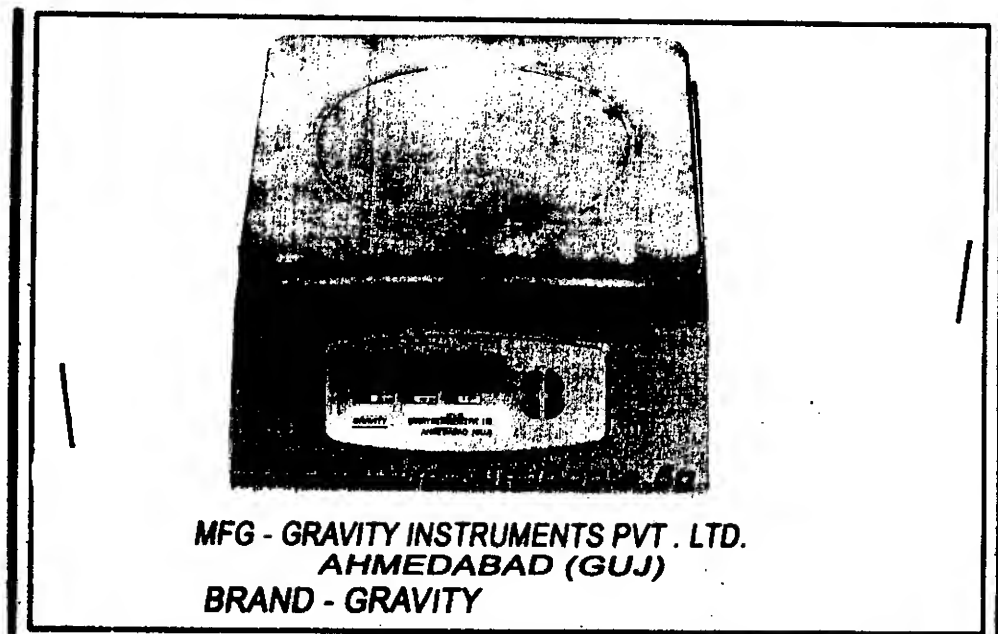
R. MATHURBOOTHAM, Director of Legal Metrology

नई दिल्ली, 8 अप्रैल, 2009

का.आ. 1332.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) और उपधारा (8) द्वारा शक्तियों का प्रयोग करते हुए मैसर्स ग्रेविटी इंस्ट्रुमेंट्स प्रा.लि., ई-12/ए, हेवन पार्क के पास, शरणम-11, रामदेवनगर, वेंजलपुर, अहमदाबाद-380 015 द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग III) वाले "जीटी-55 के" शृंखला के अंकक सूचन सहित, अस्वचालित तोलन उपकरण (टेबलटाप प्रकार) के मॉडल का, जिसके ब्रांड का नाम "GRAVITY" है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिन्ह आई एन डी/09/09/174 समनुदेशित किया गया है, अनुमोदन प्रमाण पत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (टेबलटाप प्रकार) है। इसकी अधिकतम क्षमता 30 कि.ग्रा. है और न्यूनतम क्षमता 1000 ग्रा. है। सत्यापन मापमान अंतराल (ई) 5 ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यकलनात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एल ई डी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



आकृति-2 मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम

स्टाम्प और सीलिंग के सत्यापन के लिए तुला के पिछली तरफ अपर कवर और तल प्लेट में काट कर दो छेद किए गए हैं और इन दोनों छेदों को लीड वायर से कसा गया है। उपकरण को सील से छेड़छाड़ किए बिना नहीं खोला जा सकता। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

उपकरण में केलिब्रेशन के लिए बाहरी पहुंच है। बाहरी केलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 100 मि. ग्रा. से 2 ग्रा. तक के "ई" मान के लिए 100 से 10,000 तक के रेंज में सत्यापन मापमान अंतराल (एन) और 5 ग्रा. या उससे अधिक के "ई" मान के लिए 500 से 10,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और "ई" मान $1 \times 10^*$, $2 \times 10^*$, $5 \times 10^*$, के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21 (73)/2009]

आर. माथुरबूथम, निदेशक, विधिक माप विज्ञान

New Delhi, the 8th April, 2009

S.O. 1332.—Whereas the Central Government, after considering the report submitted to it by prescribed authority, is satisfied that the Model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said Model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of the Model of non-automatic weighing instrument (Table top type) with digital indication of medium accuracy (Accuracy class-III) of Series "GT-55" K and with brand name "GRAVITY" (hereinafter referred to as the said Model), manufactured by M/s. Gravity Instruments Pvt. Ltd., E/12A, Nr. Hevan Park, Sharanam-11, Ramdevnagar, Vejalpur, Ahmedabad-380 015 which is assigned the approval mark IND/09/09/174;

The said Model is a strain gauge type load cell based non-automatic weighing instrument (Table top type) with a maximum capacity of 30kg. and minimum capacity of 100g. The verification scale interval (e) is 5g. It has a tare device with a 100 per cent subtractive retained tare effect. The Light Emitting Diode (LED) display indicates the weighing result. The instrument operates on 230 Volts, 50 Hertz alternative current power supply.



**MFG - GRAVITY INSTRUMENTS PVT. LTD.
AHMEDABAD (GUJ)
BRAND - GRAVITY**

Figure-2: Schematic diagram of sealing provision of the Model

From the back side of the weighing scale two holes are made by cutting the upper cover and bottom plate and fastened by a leaded wire through these two holes for receiving the verification stamp and seal. The weighing scale can not be opened without tampering the seal. A typical schematic diagram of sealing provision of the Model is given above.

The instrument has external control to calibration. A dip switch has also been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the powers conferred by sub-section (12) of Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said Model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity upto 50kg. with verification scale interval (n) in the range of 100 to 10,000 for 'e' value of 100mg. to 2g. and with verification scale interval (n) in the range of 500 to 10,000 for 'e' value of 5g. or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved Model has been manufactured.

[F. No. WM-21 (73) 2009]

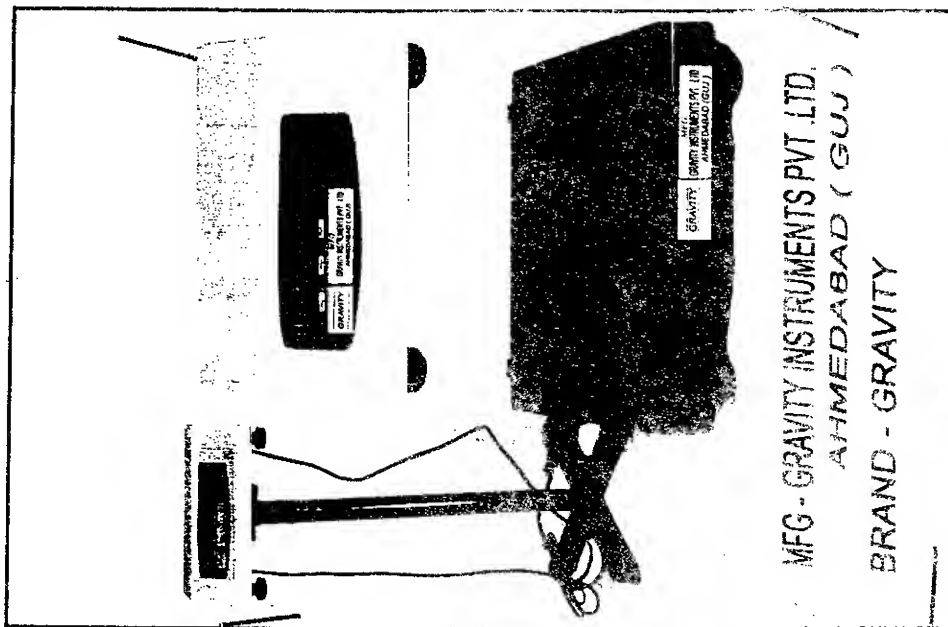
R. MATHURBOOTHAM, Director of Legal Metrology

नई दिल्ली, 8 अप्रैल, 2009

का.आ. 1333,—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) और उपधारा (8) द्वारा शक्तियों का प्रयोग करते हुए मैसर्स ग्रेविटी इंस्ट्रुमेंट्स प्रा.लि., ई-12/ए, हेवन पार्क के पास, शरणम-11, रामदेवपुर, गेजलपुर, महमदबाद-380 015 द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग III) वाले "जीटीपी-555 यू" श्रृंखला के अंकक सूचन सहित, अस्वचलित तौलन उपकरण (प्लेटफार्म प्रकार) के मॉडल का, जिसके ब्रांड का नाम "GRAVITY" है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन निचट आई एन डी/09/09/175 समनुदेशित किया गया है, अनुमोदन प्रमाण पत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचलित तौलन उपकरण (प्लेटफार्म टाइप) है। इसकी अधिकतम क्षमता 1000 कि.ग्रा. है और न्यूनतम क्षमता 2 कि. ग्रा. है। सत्यापन मापमान अंतराल (ई) 100 ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यकलनात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एल ई डी) प्रदर्श तौलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



आकृति-2 मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम

स्टाम्प और सीलिंग के सत्यापन के लिए इंडीकेटर के पिछली तरफ आउटर और इनर कवर काट कर दो छेद किए गए हैं और इन दोनों छेदों को लीड वायर से कसा गया है। उपकरण को सील से छेड़छाड़ किए बिना नहीं खोला जा सकता। मॉडल पर सीलिंग करने के उपरांत का एक परूषी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

उपकरण में केलिब्रेशन के लिए बाहरी पहुंच है। बाहरी केलिब्रेशन तक पहुंच को रोकने के लिए प्लेटफार्म/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी श्रृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तौलन उपकरण भी होंगे जो 5 ग्रा. या उससे अधिक के "ई" मान के लिए 500 से 10,000 तक के रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. से अधिक और 5000 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और "ई" मान 1×10^3 , 2×10^3 , 5×10^3 , के हैं, जो घनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू.एम्-21 (731/2009)]

आर. माथुरबुध्म, निदेशक, विधिक माप विज्ञान

New Delhi, the 8th April, 2009

S.O. 1333.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the Model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions:

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of the Model of non-automatic weighing instrument (Platform type) with digital indication of medium accuracy (Accuracy class-III) of Series "GTP-555-U" and with brand name "GRAVITY" (hereinafter referred to as the said model), manufactured by M/s. Gravity Instruments Pvt. Ltd., E/12A, Nr. Hevan Park, Sharanam-11, Ramdevnagar, Vejalpur, Ahmedbad-380 015 and which is assigned the approval mark IND/09/175;

The said model is a strain gauge type load cell based non-automatic weighing instrument (Platform type) with a maximum capacity of 1000kg. and minimum capacity of 2kg. The verification scale interval (e) is 100g. It has a tare device with a 100 per cent subtractive retained tare effect. The Light Emitting Diode (LED) indicates the weighing results. The instrument operates on 230 Volts, 50 Hertz alternative current power supply.

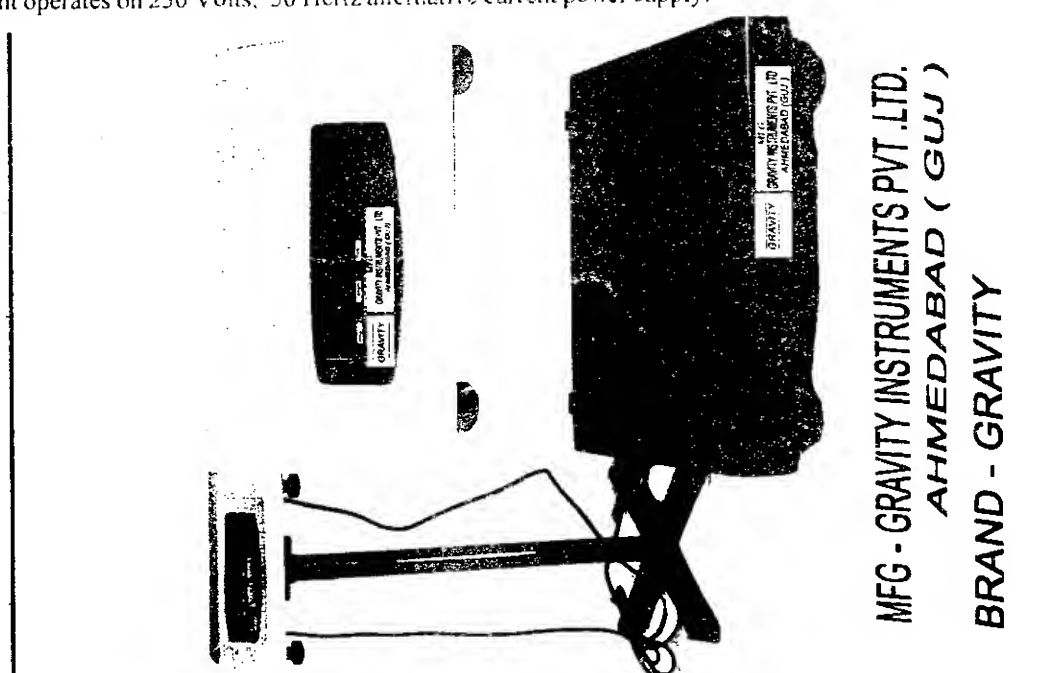


Figure-2: Sealing provision of the indicator model

By the back side of the indicator two holes are made by cutting the outer and inner cover and fastened by the lead and wire through these two holes for receiving the verification stamp and seal. The indicator can not be opened without tampering the seal. A typical schematic diagram of sealing provision of the model is given above.

The instrument has external control to calibration. A dip switch has also been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the powers conferred by sub-section (12) of Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity above 50kg. and up to 5000kg. with verification scale interval (n) in the range of 500 to 10,000 for 'e' value of 5g. or more and with 'e' value of 1×10^4 , 2×10^4 or 5×10^4 , where k is a positive or negative whole number or equal to zero manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved model has been manufactured.

[F. No. WM-21 (73)/2009]

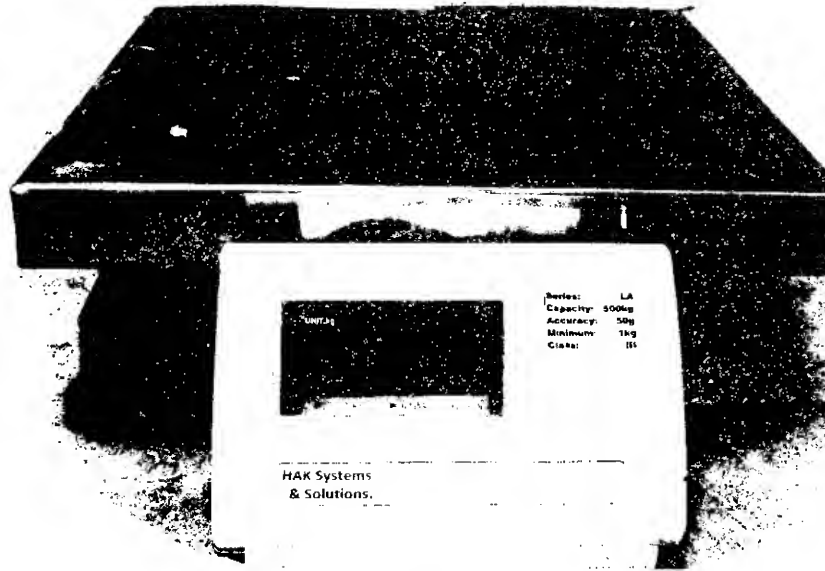
R. MATHURBOOTHAM, Director of Legal Metrology

नई दिल्ली, 8 अप्रैल, 2009

का.आ. 1334.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) और उपधारा (8) द्वारा शक्तियों का प्रयोग करते हुए मैसर्स एच ए के सिस्टम्स एंड सोल्यूशंस, 1-50, सैक्टर-2, बवाना इंडस्ट्रियल एरिया, नई दिल्ली द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग III) वाले "LA" श्रृंखला के अंकक सूचन सहित, अस्वचालित तोलन उपकरण (प्लेटफार्म टाइप) के मॉडल का, जिसके ब्रांड का नाम "HAK" है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिन्ह आई एन डी/09/09/50 समनुदेशित किया गया है, अनुमोदन प्रमाण पत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (प्लेटफार्म प्रकार) है। इसकी अधिकतम क्षमता 500 कि.ग्रा. और न्यूनतम क्षमता 1 कि. ग्रा. है। सत्यापन मापमान अंतराल (ई) 50 ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यकलनात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एल ई डी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट-और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



आकृति-2 उपकरण के मॉडल का सीलिंग प्रावधान

सीलिंग प्रावधान के लिए उपकरण के पीछे दो छेद किए गए हैं। दोनों छेदों में से सीलिंग वायर डालकर वायर को लॉक करने के लिए स्टोपिंग टेब को दबाया जाता है। बाडी पर दिए गए छेदों में से लीड और सील वायर लगाकर सीलिंग की जा सकती है। इंडीकेटर को सील के छेड़छाड़ किए बिना नहीं खोला जा सकता। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

उपकरण में बाहरी केलिब्रेशन तक पहुंच की सुविधा है। बाहरी केलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी श्रृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 5 ग्रा. या उससे अधिक के "ई" मान के लिए 500 से 10,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. 5000 कि. ग्रा. के धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21 (17)/2009]

आर. माधुरबूधम, निदेशक, विधिक माप विज्ञान

New Delhi, the 8th April, 2009

8/12/1334—Whereas the Central Government, after considering the report submitted to it by the prescribed authority is satisfied that the Model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions:

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of the model of non-automatic weighing instrument (Platform type) with digital indication of medium accuracy (Accuracy class-III) of Series "LA" and with brand name "HAK" (hereinafter referred to as the said model), manufactured by M/s. HAK System & Solutions, I-50, Sector-II, Bawana Industrial Area, New Delhi and which is assigned the approval mark IND/09/09, 50:

The said model is a strain gauge type load cell based non-automatic weighing instrument (Platform type) with a maximum capacity of 500kg. and minimum capacity of 1kg. The verification scale interval (e) is 50g. It has a tare device with a 100 percent subtractive retained tare effect. The Light Emitting Diode (LED) indicates the weighing result. The instrument operates on 230 Volts, 50 Hertz alternative current power supply.

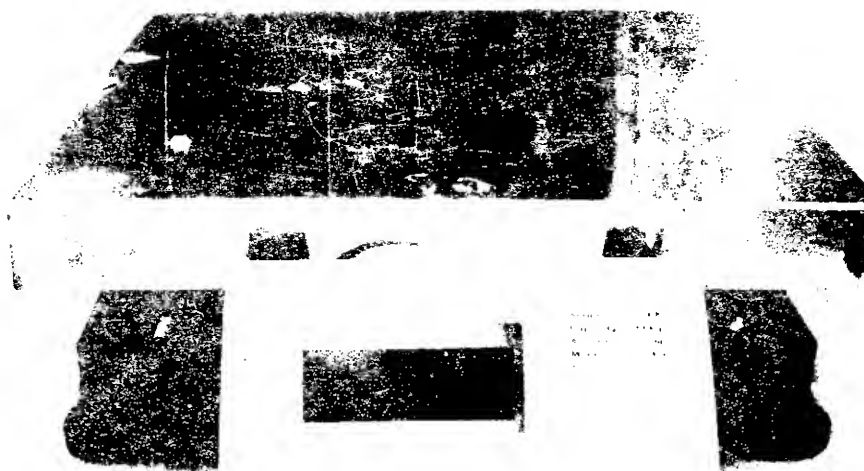


Figure 2: Sealing provision of the indicator of model

There are two holes on the back of the instrument for sealing provision. The sealing wire is inserted through both the holes and from the stamping tab is pressed to lock the wire. Sealing can be done by applying lead & seal wire through the holes provided on the back of the instrument. The instrument can not be opened without tampering the seal. A typical schematic diagram of sealing provision of the model is given above.

The instrument has external control to calibration. A dip switch has also been provided in A/D card/mother board to provide access to external calibration.

Further, in exercise of the powers conferred by sub-section (12) of Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity above 50kg. up to 5000kg. with verification scale interval (e) in the range of 500 to 10,000 for ' e ' value of 5g. or more and with ' e ' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved model has been manufactured.

[F. No. WM-21 (17)2009]

R. MATHURBOOTHAM, Director of Legal Metrology

भारतीय मानक ब्यूरो

नई दिल्ली, 5 मई, 2009

का.आ. 1335.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के नियम 6 के उपनियम (3) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अनुसूची में दिए गए उत्पादों की मुहरांकन शुल्क अधिसूचित करता है :—

अनुसूची

भारतीय भाग मानक सं. तिथि	अनु. वर्ष	उत्पाद	इकाई बड़े	न्यूनतम मुहरांकन शुल्क छोटे पैमाने पर	इकाई दर स्लैब 1	स्लैब 1 में इकाइयाँ	इकाई दर स्लैब-2	स्लैब 2 में इकाइयाँ	इकाई दर शेप	प्रचालन तिथि
10025	1981	कपड़ों के जूतों की सफेद तरल पॉलिश	100 लीटर	41200.00 35100.00	33.00	-	-	-	-	27-1-2009

[सं. केप्रवि/13:10]

पी. के. गभीर, उप महानिदेशक (मुहर)

BUREAU OF INDIAN STANDARDS

New Delhi, the 5th May, 2009

S.O. 1335.—In pursuance of sub-regulation (3) of regulation 6 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the Marking fee for the products given in the schedule:—

SCHEDULE

IS No.	Part	Sec	Year	Product	Units	Minimum Marking Fee		Unit Rate Slab 1	Units in Slab 1	Unit Rate Slab 2	Units in Slab 2	Re- main- ing	Effective Date
						Large Scale	Small Scale						
10025	-	-	1981	Polish Liquid (White) for Canvas foot wear	100 Litres	41200.00	35100.00	33.00	-	-	-	-	27-1-09

[No. CMD/13:10]

P. K. GAMBHIR Dy. Director General (Marks)

नई दिल्ली, 5 मई, 2009

का.आ. 1336.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के नियम 6 के उपनियम (3) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा नीचे अनुसूची में दिए गए उत्पादों की मुहरांकन शुल्क अधिसूचित करता है :—

अनुसूची

भारतीय भाग मानक सं. तिथि	अनु. वर्ष	उत्पाद	इकाई बड़े	न्यूनतम मुहरांकन शुल्क छोटे पैमाने पर	इकाई दर स्लैब 1	स्लैब 1 में इकाइयाँ	इकाई दर स्लैब-2	स्लैब 2 में इकाइयाँ	इकाई दर शेप	प्रचालन तिथि
15354	2003	एक बार उपयोग के लिए परीक्षण दस्ताने-विशिष्ट	100	36100.00 30700.00	0.20	-	-	-	-	06 10 2008

[सं. केप्रवि/13:10]

पी. के. गभीर, उप महानिदेशक (मुहर)

New Delhi, the 5th May, 2009

S.O. 1336.—In pursuance of sub-regulation (3) of regulation 6 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the Marking fee for the products given in the schedule:—

SCHEDULE

IS No.	Part	Sec	Year	Product	Units	Minimum Fee Large Scale	Marking Small Scale	Unit Rate Slab 1	Units in Slab 1	Unit Rate Slab 2	Units in Slab 2	Re- main- ing	Effective Date
15354	—	—	2003	Single, Use Rubber Examination Gloves	100	36100.00	30700.00	0.20	—	—	—	—	06-10-08

[No. CMD/13: 10]

P. K. GAMBHIR, Dy. Director General (Marks)

नई दिल्ली, 06 मई, 2009

का.आ. 1337.— भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :—

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (को) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	एसपी 42 : 2008 पेंच चूड़ियों का सर्वेक्षण (पहला पुनरीक्षण)	—	दिसम्बर, 2008
2.	आईएस 4298 : 2009 स्विंग सी-वाशर-विशिष्ट (दूसरा पुनरीक्षण)	—	जनवरी, 2009

इन भारतीय मानकों की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फर मार्ग, नई दिल्ली-110 002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : पीजीडी/जी-3.5]

एस. भट्टाचार्य, वैज्ञानिक 'ई' (पीजीडी)

New Delhi, the 6th May, 2009

S.O. 1337.— In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :—

SCHEDULE

Sl. No.	No. & Year and title of the Indian Standards Established	No. & Year of Indian Standards, if any, superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1.	SP 42 : 2008 Survey of Screw Threads (first revision)	—	December, 2008
2.	IS 4298 : 2009 Swing C-washers—Specification (second revision)	—	January, 2008

Copy of these Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: PGD/G-3.5]

S. BHATTACHARYYA, Scientist. 'E' (PGD)

नई दिल्ली, 6 मई, 2009

का.आ. 1338.— भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्न भारतीय मानक में संशोधन किया गया/किए गए हैं :

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या और वर्ष	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आईएस 3264 : 1985 हीरा अथवा घन आकृतिक बोरोन नाइट्राइड आपघर्षी घिसाई के पहियों की विशिष्टि	1	अप्रैल, 2009

इन संशोधनों की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002 और क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : पीजीडी/जी-3.5]

एस. भट्टाचार्य, वैज्ञानिक 'ई' (पीजीडी)

New Delhi, the 6th May, 2009

S.O. 1338.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards, hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been amended on the date indicated against each :

SCHEDULE

Sl. No.	No. and Year of the Indian Standards Established	No. of amendment and date	Date of Established
(1)	(2)	(3)	(4)
1.	IS 3264 : 1985 Specification for Diamond or Cubic Boron Nitride Abrasive Grinding Wheels (First Revision)	1	April 2009

Copy of these amendments of Standards is available for sale with Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: PGD/G-3.5]

S. BHATTACHARYYA, Scientist. 'E' (PGD)

नई दिल्ली, 11 मई, 2009

का.आ. 1339.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के उपनियम (5) के अनुसरण में भारतीय मानक व्युत्पन्न एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :—

अनुसूची

क्रम संख्या	लाइसेंस संख्या	स्वीकृत करने की तिथि, वर्ष/माह	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा.मा. संख्या	भाग	अनु. वर्ष
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	7903380	28-1-09	शेठ एंड सुरा इंजीनियर्स प्रा. लि. ए-19, एम आय डी सी चिंचोली पाकनी फाटा के पास, जिला सोलापुर-413255	जल और मलजल के लिए इस्पात के पाइप (168.3 से 2,540 मिमी बाहरी डायामीटर)	3589		2001
2.	7904079	15-1-2009	सोहम पावर एंड कंट्रोलस प्रा.लि. 20-25, प्रथम तल, पारस इंडस्ट्रीयल इस्टेट, फेज-1, टेलको रोड एम आय डी सी, भोसरी जिला पुणे-411026	एसी स्थिर वॉटहॉवर मोटर, श्रेणी 1 एवं 2	13779		1999
3.	7904786	3-2-2009	केमप्लास्ट सनमान लिमिटेड गट संख्या 96 (1-9) गाँव देवरवाडी तालुका चांदगड जिला कोल्हापुर-416507	पेयजल आपूर्ति के लिए अप्लास्टिक पीवीसी पाइप्स	4985		2000
4.	7905586	6-2-2009	न्यू सोनीगारा ज्वैलर्स, दुकान नं. 2, लक्ष्मी अपार्टमेंट चिंचवडगाँव, जिला पुणे-411033	स्वर्ण तथा स्वर्ण मिश्र धातुएं, आभूषण/शिल्पकारी-शुद्धता एवं मुहरांकन । स्वर्ण आभूषणों पर हॉलमार्किंग, खुदरा प्रकार की ।	1417		2000
5.	7907489	16-2-2009	हिंदुस्तान कोला कोला बेवरेजेज प्रा. लिमिटेड प्लॉट नं. 1105/7/8/33 ए/पी पिरांगट तालुका मुलशी जिला पुणे-412111	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543		2004
6.	7907388	2-2-2009	स्वराज इंडिया इंडस्ट्रीज लिमिटेड सं. नं. 406/407 ए/पी निम्भोरे तालुका फलटन जिला सातारा 415523	स्किम दूध पावडर 2 अतिरिक्त श्रेणी	13334	2	1992
7.	7907994	16-2-2009	कोठारी पाइप्स एंड फिटिंग्स प्रा. लिमिटेड प्लॉट नं. 146 से 157 चंद्रमौली को-आपरेटिव इंडस्ट्रीयल इस्टेट लि. मोहाले जिला सोलापुर 413213	इमीटिंग पाइप्स पद्धति	13488		2008
8.	7907893	16-2-2009	कोठारी पाइप्स एंड फिटिंग्स प्रा. लिमिटेड प्लॉट नं. 146 से 157 चंद्रमौली को-आपरेटिव इंडस्ट्रीयल इस्टेट लि. मोहाले जिला सोलापुर 413213	सिंचाई उपकरण-इमीटर्स	13487		1992

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
9.	7908188	18-2-2009	आदि प्लास्टिक इंडस्ट्रीज प्रा. लिमिटेड, 133/14, एट कगल तालुका कगल, जिला कोल्हापुर 416216	वॉटर प्रूफ लाइनिंग के लिए लेमीनेटेड उच्च घनत्व के पॉलीथिलीन (एचडीपीई) बुनाई फैब्रिक (जियो मॅम्रेन)	15351			2008
10.	7909190	13-2-2009	किलोस्कर ऑइल इंजिन्स लिमिटेड, डी-1, 5 स्टार एलआईडीसी, कगल, ए/पी तलांडगे, तालुका हटकॅंगले जिला कोल्हापुर 416202	कृषि प्रयोजनों के लिए समगति संपीडन प्रज्ज्वलन (डीजल) इंजिन्स की कार्यकारिता अपेक्षाएं (20 किवा तक)	11170			1985
11.	7894813	23-2-2009	अशोक लेलेंड लिमिटेड प्लॉट नं. 356, गट संख्या 376 सातव स्टेट, रेकॉल्ड कंपनी के पीछे, चाकन, तलेगाँव, खराडवाडी चाकन पुणे 410501	सामान्य प्रयोजनों के लिए समगति संपीडन प्रज्ज्वलन (डीजल) इंजिन्स की कार्यकारिता अपेक्षाएं (20 किवा तक)	10001			1981
12.	7891403	24-2-2009	दत्तात्रय बेवरेजेज प्रा.लि. प्लॉट नं. ई-68, एम आय डी सी, राजणगांव इंड एरिया, एट पोस्ट कारेगाँव तालुका शिरूर जिला पुणे 412220	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543			2004

[सं. सी एम डी/13 : 11]

पी. के. गम्भीर, उप महानिदेशक (मुहर)

New Delhi, the 11th May, 2009

S.O. 1339.—In pursuance of sub-regulation (5) of the Bureau of Indian Standards (Certification) Regulations, 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following Schedule :—

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name and Address of the Party	Title of the Standard	IS No.	Part	Sec.	Year
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	7903380	28-1-09	Sheth & Sura Engineers Pvt. Ltd., A-19, MIDC Chincholi Near Pakni Phata District Solapur 413255	Steel pipes for water and sewage (168.3 to 2540 mm outside diameter)	3589			2001
2.	7904079	15-1-2009	Soham Power and Controls Pvt. Ltd., 20-25, 1st Floor Paras Indl Estate, Phase I, Telco Road, MIDC Bhosari District Pune 411026	Ac static watt-hour meters, class 1 and 2	13779			1999
3.	7904786	3-2-2009	Chemplast Sanmar Ltd. Gat No. 96 (1-9) Village Deverwadi Taluka Chandgad District Kolhapur 416507	Unplasticized PVC pipes for potable water supplies	4985			2000

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
4.	7905586	6-2-2009	New Sonigara Jewellers Shop No. 2, Laxmi Apartment, Chinchwadgaon District Pune-41 1033	Gold and Gold Alloys, Jewellery/Artefacts— fineness and marking	1417	—	—	2000
5.	7907489	16-2-2009	Hindustan Coca Cola Beverages Pvt. Ltd. Plot No. 1105/7/8/33 A/P Pirangut, Taluka Mulshi District Pune 412111	Packaged Drinking Water (Other than Packaged Natural Mineral Water)	14543	—	—	2004
6.	7907388	2-2-2009	Swaraj India Industries Ltd. S.No. 406/407 A/P Nimbhore Taluka Phaltan District Satara 415523	Skim milk powder Part 2 Extra grade	13334	2		1992
7.	7907994	16-2-2009	Kothari Pipes & Fittings Pvt. Ltd., Plot No. 146 to 157 Chandramauli Co-op Indl. Estate Ltd., Mohol District Solapur 413213	Emitting pipes system	13488			2008
8.	7907893	16-2-2009	Kothari Pipes & Fittings Pvt. Ltd., Plot No. 146 to 157 Chandramauli Co-op Indl. Estate Ltd., Mohol District Solapur 413213	Irrigation equipment—Emitters	13487			1992
9.	7908188	18-2-2009	Aadi Plastic Industries Pvt. Ltd., 133/14, At Kagal Taluka Kagal District Kolhapur 416216	Laminated high density polythelene (HDPE) woven fabric (Geo-Membrane) for water proof lining	15351			2008
10.	7909190	13-2-2009	Kirloskar Oil Engine Ltd. D1, 5 Star MIDC Kagal, A/P Talandge Taluka Hatkanangale District Kolhapur 416202	Performance Requirements for Constant Speed Compression Ignition (Diesel) Engines for Agricultural Process (Up to 20 kw)	11170			1985
11.	7894813	23-2-2009	Ashok Leyland Ltd. Plot No. 356, Gat No. 376 Satav State, Behind Racold Company, Chakan Telegaon Kharadwadi, Chakan Pune 410501	Performance Requirements for Constant Speed Compression Ignition (Diesel) Engines for General Purposes (Up to 20 kw)	10001			1981
12.	7891403	24-2-2009	Dattatraya Beverages Pvt. Ltd. Plot No. E-68, MIDC Ranjangaon Indl Area At Post Karegaon Taluka Shirur District Pune 412220	Packaged Drinking Water (Other than Packaged Natural Mineral Water)	14543	—	—	2004

[No. CMD/13:11]

P. K. GAMBHIR, Dy. Director General (Marks)

नई दिल्ली, 11 मई, 2009

का.आ. 1340.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के नियम 4 के उप-नियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :—

अनुसूची

क्रम संख्या	लाइसेंस संख्या	स्वीकृत करने की तिथि, वर्ष/माह	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा.मा. संख्या	भाग	अनु	वर्ष
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	7904584	3-2-2009	मैसर्स एरोलेम लिमिटेड, दालपुर गाँव, नाननपुर रोड, ता प्रातिज डि साबरकांटा, गुजरात	डैकोरेटिव थर्मोसैटिंग सिंथेटिक रेसिन बांडिड लैमिनेटिड शीट	2046	—	—	1995
2.	7904685	3-2-2009	मैसर्स श्री शिवम डैकोर, प्लॉट नंबर 3127/3128, जी आई डी सी, फेस 3, छतराल, उत्तर प्रदेश	डैकोरेटिव थर्मोसैटिंग सिंथेटिक रेसिन बांडिड लैमिनेटिड शीट	2046	—	—	1995
3.	7905081	3-2-2009	मैसर्स सत्यम इंजीनियरिंग कम्पनी 31, गोपाल एस्टेट, हरशद चैम्बसे के पीछे, ओढव रोड, अमहदाबाद	ओपनवैल सबमर्सिबल पम्पसैट	14420	—	—	1994
4.	7905283	4-2-2009	मैसर्स स्वाति मेटल इंडस्ट्रीज 528/1, भाग्य लक्ष्मी एस्टेट, मनपसंद वे ब्रोज के पास, गांधीनगर	फायर हॉज डिलीवरी कपलिंग ब्रांच पाईप, नोजल तथा नोजल स्पैनर	903	—	—	1993
5.	7906285	11-2-2009	मैसर्स अंबिका एलाये तथा स्टील इंडिया लिमिटेड, सर्वे नंबर 1077/1 ए, भिखीबा कालेज के सामने, विसनगर वाडनगररोड, एट विसनगर, मेहसाना	स्टील फार जनरल स्ट्रक्चरल परपस	2062	—	—	2006
6.	7906386	11-2-2009	मैसर्स विशाखा इरीगेशन प्रा. लि. ब्लाक नंबर 792/4 बी, मोनिका इंडस्ट्रीज के पास, सबरसपुर रोड, गाँव मोती बोयन, ता कलोल गांधीनगर	इरीगेशन इक्यूपमेंट स्प्रींकलर पाईप	14151	1	—	1999
7.	7906992	13-2-2009	मैसर्स एसार स्टील लिमिटेड, 27 के एम, सूरत हजरीरा रोड, पी ओ हजीरा, डि सूरत	कार्बन स्टील कास्ट बिलेट इनगोट, बिलेट, बलूम तथा स्लैब फार री रोलिंग स्टील फार जनरल स्ट्रक्चरल परपस	2830	—	—	1992
8.	7907085	13-2-2009	मैसर्स जय ज्वैलर्स 12-13 सुपर माल, लाल बंगला के पास, सी जी रोड, नवरंगपुर, अहमदाबाद	स्वर्ण तथा स्वर्ण मिश्र धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन ।	1417	—	—	1999

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
9.	7907186	13-02-2009	मैसर्स एच एम एंटरप्राइस. 17-18, गोपाल नगर, शस्त्री स्टेडियम के पीछे, अहमदाबाद	स्टारस फार फ्लोरसैंट लैम्प	2215	-	-	2006
10.	7906588	16-02-2009	मैसर्स विशाखा इरीगेशन प्रा. लि. एमीटिंग पाइप सिस्टम ब्लाक नंबर 792/4 बी, मोनिक इंडस्ट्रीज के पास, सबसपुर रोड, गाँव मोती बोयन, ता कलोल, गांधीनगर		13488	-	-	1992
11.	7908289	18-02-2009	मैसर्स टापकैब केबल इंडस्ट्रीज ए-17, महालक्ष्मी इंडस्ट्रियल एस्टेट, प्लॉट नंबर 59, फेस 1, जी आई डी सी वटवा, अहमदाबाद-382445	पी वी इंसूलेटिड केबल	694	-	-	1990
12.	7908390	18-02-2009	मैसर्स टापकैब केबल इंडस्ट्रीज ए-17, महालक्ष्मी इंडस्ट्रियल एस्टेट, प्लॉट नंबर 59, फेस 1, जी आई डी सी वटवा, अहमदाबाद-382445	पी वी इंसूलेटिड (एच डी) केबल	1554	1	-	1988
13.	7909392	20-02-2009	मैसर्स ड्यूक प्लास्टो टेक्निक प्रा. लि. एन एच 14, डीसा हाइवे, होटल ग्रीन वुड के सामने, बदरपुरा, पालनपुर, बनसकांटा उत्तर गुजरात	मोटर्स फार सबमर्सिबल पम्पसैट	9283	-	-	1995
14.	7909493	20-02-2009	मैसर्स नीता केबल, एफ/4/1 फेस-2, जी आई डी सी एस्टेट, नरोडा, अहमदाबाद	पी वी इंसूलेटिड केबल	694	-	-	1990
15.	7914789	23-02-2009	मैसर्स बायर कापसाईस लिमिटेड प्लॉट नंबर 66/1 से 75/2, जी आई डी सी एस्टेट, हिम्मतनगर, साबरकांटा	साईफलूथरिन इमलसन इन वाटर (ई डब्ल्यू)	15228	-	-	2002
16.	7910882	25-02-2009	मैसर्स गोल्ड फीच ज्वैलरी लिमिटेड, जी एफ-5, परीसीमा काम्पलैक्स, स्वागत क्रास रोड के पास, सी जी रोड, अहमदाबाद	स्वर्ण तथा स्वर्ण मिश्र धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999

[सं. सीएमडी/13:11]

पी. के. गम्भीर, उपमहानिदेशक (मुहर)

New Delhi, the 11th May, 2009

S. O. 1340.— In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :

SCHEDULE

Sl. No.	Licences No.	Grant Date	Name and Address of the party	Title of the Standard	IS No.	Part	Sec	Year
1	2	3	4	5	6	7	8	9
1	7904584	03-02-2009	Airolam Limited Dalpur Village, Nananpur Road, Ta Prantij, Dist (SK) Gujarat	Decorative thermosetting synthetic Resin bonded laminated sheets.	2046	—	—	1995
2	7904685	03-02-2009	Shree Shivam Decor Plot No. 3127/3128, G.I.D.C. Phase 3, Chhatral (N.G.)	Decorative thermosetting synthetic Resin bonded laminated Sheets.	2046	—	—	1995
3	7905081	03-02-2009	Satyam Engineering Co 31, Gopal Estate, B/H, Harsad Chember Odhav Road, Ahmedabad	Openwell submersible pumpsets	14220	—	—	1994
4	7905283	04-02-2009	Swati Metal Industries 528/1 Bhagyalaxmi Estate Near Manpasand Weigh Bridge Gandhinagar	Fire house delivery couplings, branch pipe, Nozzles and Nozzle Spanner	903	—	—	1993
5	7906285	11-02-2009	Ambica Alloys and Steels India Ltd, Survey No. 1077/1, Opp. Bhikhibaa College, Visnagar, Vadnagar Road, At Visnagar, Mehsana	Steel for general structural purposes	2062	—	—	2006
6	7906386	11-02-2009	Vishakha Irrigation Pvt. Ltd. Block No. 792/4 B, Near Monic Industry, Sabaspur Road, Village Moti Bhoyan, Ta Kalo ¹ Gandhinagar	Irrigation equipment sprinkler pipes	14151	1	—	1999
7	7906992	13-02-2009	Essar Steel Ltd. 27KM, Surat-Hazira Road, P.O. Hazira, Dist Surat	Carbon Steel Cast Billet Ingots, Billets, Blooms and Slabs for Re-rolling into Steel for General Structural purposes	2830	—	—	1992
8	7907085	13-02-2009	Jay Jewellers 12-13 Super Mall, Near Lal Bunglow, C. G. Road Navrangpura, Ahmedabad	Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking	1417	—	—	1999
9	7907186	13-02-2009	H M Enterprise 17-18, Gopal Nagar, Behind Shastri Stadium, Ahmedabad	Starters for fluorescent Lamps	2215	—	—	2006

1	2	3	4	5	6	7	8	9
10	7906588	16-02-2009	Vishakha Irrigation Pvt. Ltd. Block No. 792/4B, Near Monic Industry, Sabaspur Road, Village Moti Bhoyan, Taluka Kalol, Gandhinagar	Emitting pipes system	13488	—	—	1992
11	7908289	18-02-2009	Topcab Cable Industries A-17, Mahalaxmi Ind. Estate Plot No. 59, Phase I, GIDC Vatva, Ahmedabad-382445	PVC Insulated Cables	694	—	—	1990
12	7908390	18-02-2009	Topcab Cable Industries A-17, Mahalaxmi Ind. Estate Plot No. 59, Phase I, GIDC Vatva, Ahmedabad-382445	PVC Insulated (HD) Cables	1554	1		1988
13	7909392	20-02-2009	Duke Plasto Technique Pvt. Ltd., N.H. 14 Deesa High way, Opp Hotel Green Wood, Badarpura, Palanpur, (N. Gujarat) Banaskantha	Motors for submersible Pumpsets	9283	—	—	1995
14	7909493	20-02-2009	Neeta Cables F/4/1 Phase-2, GIDC Estate, Naroda, Ahmedabad	PVC Insulated Cables	694	—	—	1990
15	7914789	23-02-2009	Bayer Cropscience Limited Plot No. 66/1 to 75/2 GIDC Estate, Himatnagar, Sabarkantha	Cyfluthrin-Emulsion in Water (EW)	15228	—	—	2002
16	7910882	25-02-2009	Goldfinch Jewellery Limited G-F-5, Pariseema Complex, Near Swagat Cross Road, C.G. Road, Ahmedabad	Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking	1417	—	—	1999

[No. CMD/13:11]

P. K. GAMBHIR, Dy. Director General (Marks)

नई दिल्ली, 11 मई, 2009

का. आ. 1341.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 5 के उप-विनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिनके विवरण नीचे अनुसूची में दिए गए हैं को लाइसेंस प्रदान किए गए हैं :

अनुसूची

क्रम सं.	लाइसेंस सं.	लाइसेंस मंजूरी तिथि	पार्टी का नाम एवं पता (कारखाना)	उत्पाद	आइ एस सं./भाग/खण्ड वर्ष
1	2	3	4	5	6
1.7906689		27-02-2009	जय महाराज एगो इण्डस्ट्रीज कार्यालय सं. 1 यशोधन अपार्टमेंट बापू बंगला बस स्टाप के नजदीक इंदिरा नगर, नासिक 422009	पैकेजबंद पीने का पानी (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	भामा 14543:2004

1	2	3	4	5	6
2.	7910983	27-02-2009	अमेया कंक्रीट प्रा. लि. 12, पहला माला, मिर्जा नगर, रेलवे स्टेशन थाना के सामने विरार 401303	पूर्वदलित कंक्रीट पाइप्स (सहित और बिना प्रबलन)	भामा 458:2003
3.	7911480	03-03-2009	एमडब्ल्यू अभिजीत मिनरल वाटर 8 लाब्डी अपार्टमेंट सिंगाडा तालाब, नासिक 422001	पैकेजबंद पीने का पानी (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	भामा 14543:2004
4.	7911581	03-03-2009	हिन्दुस्तान कोको कोला बेवरेजेज प्राईवेट लिमिटेड प्लॉट सं. बी-19, एमआयडीसी अंबाड, नासिक-422010	पैकेजबंद पीने का पानी (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	भामा 14543:2004
5.	7911682	03-03-2009	इंटरनेशनल पैकेजिंग प्रोडक्ट्स प्रा. लिमिटेड सर्वे सं. 380/2, दापाडा गाँव, सिलवासा-396230, दादरा और नगर हवेली	कैनाल लाईनिंग के लिए वस्त्रादि.-लेमिनेटेड उच्च घनत्व पॉलीथिलीन (एचडीपीएफ) फैब्रिक्स	भामा 15351:2003
6.	7913686	16-03-2009	सोहम इण्डस्ट्रीज जी-2 पल्लवी, प्लॉट सं. 244 सेक्टर सं. 4, चारकोप, मुम्बई-400067	पैकेजबंद पीने का पानी (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	भामा 14543:2004
7.	7916692	25-03-2009	टफरोप्स प्राईवेट लिमिटेड सर्वे सं. 101, प्लॉट सं. 6 राखोली इण्डस्ट्रीयल इस्टेट राखोली गाँव, सिलवासा-396230 दादरा और नगर हवेली	पॉलीथिलीन रस्सी	भामा 8674:1989

[सं. केप्रवि/13:11]

पी. के. गंभीर, उप महानिदेशक (मोहर)

New Delhi, the 11th May, 2009

S. O. 1341.—In pursuance of sub-regulation (6) of regulation 5 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name and Address (Factory) of the Party	Product	IS No./Part/Sec. year
1	2	3	4	5	6
1.	7906689	27-02-2009	Jai Maharaj Agro Industries Office No. 1, Yashodhan Apartment Near Bapu Bungalow Bus Stop, Indira Nagar, Nashik-422009	Packaged Drinking Water (other than Packaged Natural Mineral Water)	14543:2004
2.	7910983	27-02-2009	Ameya Concretech Pvt. Ltd., 12, 1st floor, Mirza Nagar, opp. Railway Station Thane Virar(E) 401303	Precast Concrete Pipes (with and without Reinforcement)	458:2003

1	2	3	4	5	6
3.	7911480	03-03-2009	AMW Abhijeet Mineral Water 8 Labdhi Apartment, Singada Talao, Nashik-422 001	Packaged drinking Water (other than Packaged Natural Mineral Water)	14543:2004
4.	7911581	03-03-2009	Hindustan Coca Cola Beverages Private Limited Plot No. B-19, MIDC Ambad, Nashik-422 010	Packaged drinking Water (other than Packaged Natural Mineral Water)	14543:2004
5.	7911682	03-03-2009	International Packaging Products Pvt. Ltd., Survey No. 380/2, Village-Dapada Silvassa-396 230, Dadra and Nagar Haveli	Textiles—Laminated High Density Poly- ethylene (HDPE) Fabric for Canal Lining	15351:2003
6.	7913686	16-03-2009	Sohum Industries G-2 Pallavi, Plot No. 244, Sector No. 4, Charkop, Mumbai-400 067	Packaged drinking Water (other than Packaged Natural Mineral Water)	14543:2004
7.	7916692	25-03-2009	Tufropes Private Limited Survey No. 101, Plot No. 6, Rakholi Industrial Estate, Village Rakholi, Silvassa- 396 230 Dadra and Nagar Haveli.	Polyethylene ropes	8674:1989

[No. CMD/13:11]

P. K. GAMBHIR, Dy. Director General (Marks)

नई दिल्ली, 11 मई, 2009

का. आ. 1342.—भारतीय मानक ब्यूरो (प्रमाणन) विनियमन, 1988 के उप-विनियमन (5) के तहत यह अधिसूचित किया जाता है कि निम्नलिखित ब्यूरो वाले लाइसेन्स प्रदान किए जाते हैं।

अनुसूची

क्रम सं.	लाइसेन्स सं.	लागू तिथि	पार्टी का नाम व पता (कारखाना)	मानक की उपाधि	भामा संख्या भाग/खंड व वर्ष
1.	6903476	2009-02-04	मैसर्स राजा स्टील्स प्राइवेट लिमिटेड 123/1, वेलन्तावलम रोड, तिरुमलयमपालयम, मदुक्करै, कोयम्बतूर-641 105	सामान्य संरचना इस्पात में पुनर्वेल्लन के लिए कॉर्बन, ढलवाँ इस्पात बिलेट इंगट, बिलेट, ब्लूम और स्लैब	IS 2830:1992
2.	6903577	2009-02-04	मैसर्स सी ई सी मोटर्स प्राइवेट लिमिटेड, साइट सं. 29, पीलमेडू इंडस्ट्रीयल एस्टेट, वी. के. रोड, पीलमेडू, कोयम्बतूर-641 004	तीन फेज़ीय प्रेरण मोटरें	IS 325:1996
3.	6905076	2009-02-10	मैसर्स पविजम ज्वेलर्स, 277, क्रॉस कट रोड, गांधीपुरम, कोयम्बतूर-641 012	स्वर्ण तथा स्वर्ण मिश्र धातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मार्किंग	IS 1417:1999

1	2	3	4	5	6
4.	6905581	2009-02-11	मैसर्स हेल्थकेयर प्योर ड्रिंकिंग वाटर 315, श्री वरी गार्डन, नन्जागौन्डनपालयम, गोबीचेट्टीपालयम-638 476	पैकेजबंद पेयजल (पैकेजबंद मिनरल जल के अलावा)	IS 14543:2004
5.	6908890	2009-02-24	मैसर्स अम्मन इंजीनियरिंग 154-17, कुलतुपुन्जै स्ट्रीट, आर. के. आर. नगर, धारापुरम-638 656	गहरे कुओं के निम्नजनीय पंप सेट	IS 14220:1994
6.	6908789	2009-02-24	मैसर्स एपेक्स इंडस्ट्री सं. 334/2, राजागोपाल ले औट इलंगो नगर, कोयम्बतूर-641 006	कृषि तथा जल आपूर्ति के लिए साफ ठंडे पानी के बिजली के मोनोसेट पम्प	IS 9079:2002

[सं. सीएमडी/13:11]

पी. के. गम्भीर, उप महानिदेशक (मार्क्स)

New Delhi, the 11th May, 2009

S. O. 1342.—In pursuance of sub-regulation (5) of the Bureau of Indian Standards (Certification) Regulation 1988, of the Bureau of Indian Standards, hereby notifies the grant of licence particular of which are given in the following schedule :

SCHEDULE

Sl. No.	Licence No.	Operative Date	Name and Address (Factory) of the party	Title of the Standard	IS No./Part/Sec. year
1	2	3	4	5	6
1.	6903476	2009-02-04	M/s. Raja Steels Private Limited, 123/1, Velandhavalam Road, Thirumalayam Palayam, Madukkarai, Coimbatore-641 105	Carbon steel cast billet ingots, billets, blooms and slabs for re-rolling into steel for general structural purposes	IS 2830:1992
2.	6903577	2009-02-04	M/s. CEC Motors Private Limited, Site No. 29, Peelamedu Indl. Estate, V. K. Road, Peelamedu, Coimbatore-641 004	Three phase induction motors	IS 325:1996
3.	6905076	2009-02-10	M/s. Pavizham Jewellers, 277, Cross cut Road, Gandhipuram, Coimbatore-641 012	Gold and gold alloys, Jewellery/artifacts- fineness and marking	IS 1417:1999
4.	6905581	2009-02-11	M/s. Health Care Pure Drinking Water, 315, Sree Vari Garden, Nanja Goundenpalayam, Gobichettipalayam-638 476	Packaged drinking water (other than packaged natural mineral water)	IS 14543:2004
5.	6908890	2009-02-24	M/s. Amman Engineering 154-17, Kulathupunjai Street, R.K.R. Nagar, Dharapuram-638 656	Openwell Submersible Pumpsets	IS 14220:1994
6.	6908789	2009-02-24	M/s. Apex Industry, No. 334/2, Rajagopal Lay Out, Elango Nagar, Coimbatore-641 006	Electric Monoset Pumps for clear, cold water for agricultural and water	IS 9079:2002

[No. CMD/13:11]

P. K. GAMBHIR, Dy. Director General (Marks)

नई दिल्ली, 11 मई, 2009

का. आ. 1343.— भारतीय मानक ब्यूरो के भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के उप-विनियमन (5) के तहत यह अधिसूचित किया जाता है कि निम्नलिखित ब्यूरो वाले लाइसेन्स प्रदान किए जाते हैं।

अनुसूची

क्रम सं.	लाइसेन्स सं.	लागू तिथि	पार्टी का नाम व पता (कारखाना)	मानक की उपाधि	भामा संख्या भाग/खंड व वर्ष
1.	6895002	2009-01-01	मैसर्स कृष टेक, 1-ए. रंगनाथन स्ट्रीट, रामाकृष्णापुरम, गणपति (पी.ओ.), कोयम्बतूर-641006	साफ ठंडे पानी के लिए अपकेंद्रीय पुनरूत्पादक पम्पस	IS 8472:1998
2.	6895204	2009-01-01	मैसर्स रोस्वार स्टील्स प्राइवेट लिमिटेड 32/1, एम.जी.चेट्टिपालयम (पी.ओ.), गणेशपुरम, एस. एस. कुलम (दरास्ते), कोयम्बतूर-641107	सामान्य संरचना इस्पात में पुनर्वेल्लन, के लिये कॉर्बन, ढलवाँ इस्पात, बिलेट, इंगट, बिलेट, ब्लूम और स्लैब	IS 2830:1992
3.	6895103	2009-01-01	मैसर्स अम्मा एलोय (इंडिया) प्राइवेट, लिमिटेड, एस एफ सं. 367, अप्पानायकनपट्टीपुदुर, अप्पानायकनपट्टी, सुलूर-641301	सामान्य संरचना इस्पात में पुनर्वेल्लन के लिये कॉर्बन, ढलवाँ इस्पात, बिलेट, ब्लूम और स्लैब	IS 2830:1992
4.	6896004	2009-01-05	मैसर्स युनाइटेड ब्लीचर्स लिमिटेड, पोस्ट बॉक्स सं. 12, नेल्लितुरै रोड, मेट्टूपालयम, कोयम्बतूर-641 301	यूनीफॉर्म के लिए पॉलीस्टर ब्लेन्ड शर्टिंग	IS 11815:1986
5.	6899212	2009-01-16	मैसर्स जयलक्ष्मी ज्वेलर्स, 15, मुत्तुरंगन स्ट्रीट, ईरोड-638001	स्वर्ण तथा स्वर्ण मिश्र धातुएं, आभूषण/शिल्पकारी शुद्धता एवं मार्किंग	IS 1417:1999
6.	6899515	2009-01-19	मैसर्स कोयम्बतूर मुरुगन मिल्स, मेट्टूपालयम रोड, पी. ओ. बॉक्स सं. 7004, कोयम्बतूर-641043	यूनीफॉर्म के लिए पॉलीस्टर ब्लेन्ड सूटिंग	IS 11248:1995
7.	6900066	2009-01-20	मैसर्स ए. आर. एस. वाटर्स, सं. 6/50/2, तिरुनीलकण्डर स्ट्रीट, तिरुमुरुगन पून्डी, अविनाशि-641652	पैकेजबंद पेयजल (पैकेजबंद मिनरल जल के अलावा)	IS 14543:2004

[सं. सीएमडी/13:11]

पी. के. गम्भीर, उप महानिदेशक (मावर्स)

New Delhi, the 11th May, 2009

S. O. 1343.— In pursuance of sub-regulation (5) of the Bureau of Indian Standards (Certification) Regulation 1988, of the Bureau of Indian Standards, hereby notifies the grant of licence particular of which are given in the following schedule :

SCHEDULE

Sl. No.	Licence No.	Operative Date	Name and Address (Factory) of the party	Title of the Standard	IS No. Part/Sec. Year
1	2	3	4	5	6
1.	6895002	2009-01-01	M/s. Krish Tech, 1-A, Ranganathan Street, Ramakrishnapuram, Ganapathy, P.O., Coimbatore-641006	Centrifugal Regenerative Pumps for clear, cold water	IS 8472 : 1998

1	2	3	4	5	6
2.	6895204	2009-01-01	M/s. Rosvar Steels Private Limited, Unit II, 32/1, M.G. Chettipalayam, (P.O.), Ganeshapuram, S.S. Kulam, (Via), Coimbatore-641 107	Carbon steel cast billet ingots, billets, blooms and slabs for re-rolling into steel for general structural purposes	IS 2830 : 1992
3.	6895103	2009-01-01	M/s. Amma Alloy (India) Private Limited, SF No. 367, Appanaickenpattypudur, Appanaickenpatty, Sulur-641 402	Carbon steel cast billet ingots, billets, blooms and slabs for re-rolling into steel for general structural purposes	IS 2830 : 1992
4.	6896004	2009-01-05	M/s. United Bleachers Limited, Post Box No. 12, Nellithurai Road, Mettupalayam, Coimbatore-641301	Polyester Blend Shirting for Uniforms	IS 11815 : 1986
5.	6899212	2009-01-16	M/s. jayalakshmi Jewellers, 15, Muthurangan Street, Erode-638 001	Gold and gold alloys, Jewellery/artifacts-fineness and marking	IS 1417:1999
6.	6899515	2009-01-19	M/s. Coimbatore Murugan Mills, Mettupalayam Road, P.O. Box No. 7004, Coimbatore-641 043	Textiles-Polyester blend suiting for Uniforms	IS 11248 : 1995
7.	6900066	2009-01-20	M/s. A.R.S. Waters No. 6/50/2, Thiruneelakander Street, Thirumurugan Poondi, Avinashi-641652	Packaged drinking water (Other than packaged natural mineral water)	IS 14543:2004

[No. CMD/13:11]

P. K. GAMBHIR, Dy. Director General (Marks)

नई दिल्ली, 11 मई, 2009

का. आ. 1344.- केन्द्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय (खाद्य और सार्वजनिक वितरण विभाग) के प्रशासनिक नियंत्रणाधीन भारतीय खाद्य निगम तथा केन्द्रीय भण्डारण निगम के निम्नलिखित कार्यालयों, जिनके 80 प्रतिशत से अधिक कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है:-

1. भारतीय खाद्य निगम,
जिला कार्यालय, कोषिकोड, केरल
2. केन्द्रीय भण्डारण निगम,
क्षेत्रीय कार्यालय, नवी मुम्बई, महाराष्ट्र

[संख्या ई-11011/1/2008-हिन्दी]

नवीन प्रकाश, संयुक्त सचिव

New Delhi, the 11th May, 2009

S. O. 1344.—In pursuance of Sub-rule (4) of rule 10 of the Official Language (use for official purpose of the Union) Rules, 1976 the Central Government hereby notifies the following offices of Food Corporation of India and Central Warehousing Corporation under the administrative control of the Ministry of Consumer Affairs, Food & Public Distribution (Deptt. of Food & Public Distribution), where of more than 80% of staff have acquired the working knowledge of Hindi :—

1. Food Corporation of India,
Distt. Office, Kozikode, Kerala
2. Central Warehousing Corporation,
Regional Office, Navi Mumbai, Maharashtra

[No. E-11011/1/2008-Hindi]

NAVEEN PRAKASH, Jt. Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 19 मई, 2009

का.आ. 1345.—केन्द्र सरकार ने, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उप-धारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ. 2622 तारीख 15 सितम्बर, 2008, जो भारत के राजपत्र तारीख 20 सितम्बर, 2008 में प्रकाशित की गई थी, द्वारा, उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में गुजरात राज्य में वाडीनार संस्थापन से मध्य प्रदेश राज्य में बीना तक कच्चे पेट्रोलियम उत्पादों के परिवहन के लिए वाडीनार-बीना पाइपलाइन परियोजना के माध्यम से भारत ओमान रिफाइनरीज लिमिटेड द्वारा पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन के अपने आशय की घोषणा की थी;

और, उक्त राजपत्रित अधिसूचना की प्रतियां जनता को तारीख 22 नवम्बर, 2008 को उपलब्ध करा दी गई थी;

और, सक्षम प्राधिकारी ने, उक्त अधिनियम की धारा 6 की उप-धारा (1) के अधीन केन्द्र सरकार को अपनी रिपोर्ट दे दी है;

और, केन्द्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात् और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाइन बिछाने के लिए अपेक्षित है, उसमें उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के लिए उपयोग के अधिकार का अर्जन किया जाता है;

और, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप-धारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निदेश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख को केन्द्रीय सरकार में निहित होने के बजाए, सभी विल्लंगमों से मुक्त, भारत ओमान रिफाइनरीज लिमिटेड में निहित होगा।

अनुसूची

तहसील : महिदपुर		जिला : उज्जैन	राज्य : मध्य प्रदेश
क्रम सं.	ग्राम का नाम	सर्वे नंबर	क्षेत्रफल हैक्टेयर में
1	2	3	4
1.	बरखेड़ी बाजार	34	0.02
		63	0.09
		139/1	0.07

[फा. सं. आर-31015/26/2008-ओ.आर.-II]

ए. गोस्वामी, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 19th May, 2009

S.O. 1345.—Whereas by a notification of the Government of India in the Ministry of Petroleum and Natural Gas number S.O. 2622 dated 15th September, 2008, issued under sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of Users in Land), Act, 1962 (50 of 1962), (hereinafter referred to as the said Act), published in Gazette of India dated the 20th September, 2008, the Central Government declared its intention to acquire the Right of User in land specified in the Schedule appended to that notification for the purpose of laying pipeline for transportation of Crude Oil through Vadinar-Bina Crude Pipeline Project from Vadinar in the State of Gujarat to Bina in the State of Madhya Pradesh by Bharat Oman Refineries Limited;

And whereas the copies of the said Gazette notification were made available to the public on the 22nd November, 2008.

And whereas the Competent Authority has, under sub-section (1) of Section 6 of the said Act, submitted its report to the Central Government;

And whereas the Central Government, after considering the said report and on being satisfied that the said land is required for laying the pipeline, has decided to acquire the Right of User therein;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the Right of User in the said land specified in the Schedule, is hereby acquired for laying the pipeline;

And, further, in exercise of the powers conferred by sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the Right of User in the said land for laying the pipeline shall, instead of vesting in the Central Government vest, on the date of the publication of the declaration, in Bharat Oman Refineries Limited, free from all encumbrances.

SCHEDULE

Tehsil : Mahidpur District : Ujjain State : Madhya Pradesh

Sl. No.	Name of Village	Survey No.	Area in Hectare
1	2	3	4
1.	Barkhedi Bazar	34	0.02
		63	0.09
		139/1	0.07

[F. No. R-31015/26/2008-OR-II]

A. GOSWAMI, Under Secy.

नई दिल्ली, 19 मई, 2009

New Delhi, the 19th May, 2009

का.आ. 1346.—केन्द्र सरकार ने, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उप-धारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ. 2703 तारीख 24 सितम्बर, 2008, जो भारत के राजपत्र तारीख 27 सितम्बर, 2008 में प्रकाशित की गई थी, द्वारा, उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में गुजरात राज्य में वाडीनार संस्थापन से मध्य प्रदेश राज्य में बीना तक कच्चे पेट्रोलियम उत्पादों के परिवहन के लिए वाडीनार-बीना पाइपलाइन परियोजना के माध्यम से भारत ओमान रिफाईनरीज लिमिटेड द्वारा पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन के अपने आशय की घोषणा की थी;

और, उक्त राजपत्र अधिसूचना की प्रतियां जनता को तारीख 1 दिसम्बर, 2008 को उपलब्ध करा दी गई थी;

और, सक्षम प्राधिकारी ने, उक्त अधिनियम की धारा 6 की उप-धारा (1) के अधीन केन्द्र सरकार को अपनी रिपोर्ट दे दी है;

और, केन्द्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात् और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाइन बिछाने के लिए अपेक्षित है, उसमें उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के लिए उपयोग के अधिकार का अर्जन किया जाता है;

और, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप-धारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निदेश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख को केन्द्रीय सरकार में निहित होने के बजाए, सभी विल्लंगमों से मुक्त, भारत ओमान रिफाईनरीज लिमिटेड में निहित होगा।

अनुसूची

तहसील : तराना	जिला : उज्जैन	राज्य : मध्य प्रदेश	
क्रम सं.	ग्राम का नाम	सर्वे नंबर	क्षेत्रफल हैक्टेयर में
1	2	3	4
1.	लालाखेडी	393	0.05
	रुपाखेडी	371	0.014
	बुखारी	149	0.13

[फा. सं. आर-31015/22/2008-ओ.आर.-II]

ए. गोस्वामी, अवर सचिव

S.O. 1346.—Whereas by a notification of the Government of India in the Ministry of Petroleum and Natural Gas number S.O. 2703 dated the 24th September, 2008, issued under sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of Users in Land), Act, 1962 (50 of 1962), (hereinafter referred to as the said Act), published in Gazette of India dated the 27th September, 2008, the Central Government declared its intention to acquire the Right of User in the land specified in the Schedule appended to that notification for the purpose of laying pipeline for transportation of Crude Oil through Vadinar-Bina Crude Pipeline Project from Vadinar in the State of Gujarat to Bina in the State of Madhya Pradesh by Bharat Oman Refineries Limited.

And whereas the copies of the said Gazette notification were made available to the public on the 1st December, 2008.

And whereas the Competent Authority has, under sub-section (1) of Section 6 of the said Act, submitted its report to Central Government.

And whereas the Central Government, after considering the said report and on being satisfied that the said land is required for laying the pipeline, has decided to acquire the Right of User therein;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the Right of User in the said land specified in the Schedule is hereby acquired for laying the pipeline;

And, further, in exercise of the powers conferred by sub-section (4) of Section 6 of the said Act, the Central Government directs that the Right of User in the said land for laying the pipeline shall, instead of vesting in the Central Government vest, on the date of the publication of this declaration, in Bharat Oman Refineries Limited, free from all encumbrances.

SCHEDULE

Tehsil : Tarana District : Ujjain State : Madhya Pradesh

Sl. No.	Name of Village	Survey No.	Area in Hectare
1	2	3	4
1.	Lalakhedi	393	0.05
2.	Rupakhedi	371	0.014
3.	Bukhari	149	0.13

[F. No. R-31015/22/2008-OR-II]

A. GOSWAMI, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 15 अप्रैल, 2009

का.आ. 1347.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. एयर इंडिया लि./एयर इंडिया चार्टर लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण /श्रम न्यायालय संख्या-2, मुंबई के पंचाट (संदर्भ संख्या 2/121/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-04-2009 को प्राप्त हुआ था।

[सं. एल-11012/08/2001-आई आर (सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 15th April, 2009

S.O. 1347.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/121/2001) of the Central Industrial Tribunal /Labour Court No.-2, Mumbai now as shown in the Annexure in Industrial Dispute between the employers in relation to the management of M/s. Air India Charters Ltd./Air India Ltd. and their workmen, which was received by the Central Government on 15-4-2009.

[No. L-11012/08/2001-IR(C-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI**

Present : Shri A. A. Lad, Presiding Officer

Reference No. CGIT-2/121 of 2001

Employers in relation to the management of

(1) Air India Charters Limited

(2) Air India Ltd.

(1) The Managing Director
Air India Charters Ltd.
Old Airport, Santacruz (E)
Mumbai-400 029.

(2) Air India Ltd.
Old Airport, Santacruz (E)
Mumbai 400 029.

AND

Their workman

The Secretary
Mumbai Mazdoor Sangh
25, Ebrahim Mansion
Dr. Ambedkar Marg
Parel, Mumbai-400 012.

APPEARANCESFor the Employers (1) & (2) : Mr. L.L.D'Souza
RepresentativeFor the Workman : Mr. S.S. Chaubal
Advocate.

Mumbai, Dated 13th March, 2009

AWARD

The Government of India, Ministry of Labour by its Order No. L-11012/8/2001-IR(C-I) dated 7-11-2001 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947, have referred the following dispute to this Tribunal for adjudication :

“क्या मुंबई मजदूर संघ की एअर इंडिया लिमिटेड के प्रबंधन से उनके माँग पत्र संख्या बी/एम.एम.एस./211/99 दिनांक 19-3-99 (प्रति संलग्न है) द्वारा की गई माँगें उचित एवं तर्कसंगत हैं? यदि हाँ तो क्या उक्त प्रबंधन द्वारा उनपर विचार न किया जाना सही एवं न्यायसंगत है तथा इस संबंध में क्या उक्त निर्देश आवश्यक हैं?”

2. Claim Statement is filed at Ex-6 by Second party Union which was replied by first party-No. 1 by filing Written Statement at Ex-11 and by first party No.2 at Ex-25. Issues are framed at Ex-12.

3. Matter was fixed for recording of evidence, meanwhile union requested to take matter in Lok Adalat. Accordingly vide Ex-32 matter was taken in Lok Adalat. Second party Union filed purshis for withdrawing the reference as the matter is amicably settled between the parties at Ex-33, on which the reference is disposed of. Hence the order :

ORDER

Vide Ex-32 & Ex-33
reference is disposed of in
Lok Adalat.

Date : 13-03-2009

A. A. LAD, Presiding Officer

Ex-32

**BEFORE THE LOK ADALAT HELD ON
13th MARCH, 2009**

Proceedings in respect of

Reference CGIT-2/121/2001

Parties : (1) Air India Charters Limited.

(2) Air India Ltd.

Vs.

Mumbai Mazdoor Sangh

Panel :

Shri S. B. Kadam, Advocate

Shri M. B. Anchan, Advocate

Shri S. V. Alva, Advocate

APPEARANCESFor the First Party : Mr. Lancy D'Souza,
RepresentativeFor the Second Party : Mr. S. Chaubal,
Advocate

The parties have filed an application signed by 22
workmen duly signed in presence of the Advocate on

record. The contents of the application has been read out and explained and it is confirmed by them. The above Reference is to be disposed of and to be placed before Hon'ble Presiding Officer for orders. The matter is fixed for orders. The application dated 13-3-09 is taken on record.

Sd/- Sd/- Sd/-
(Lancy D'Souza) (S. S. Chaubal) (J. P. Singh)
Secretary
Mumbai
Mazdoor Sangh

Seen

Sd/-

Presiding officer
CGIT-2, Mumbai

Sd/- Sd/- Sd/-
(S. B. Kadam) (M. B. Anchan) (S. V. Alva)
PANELISTS

Ex-33

**BEFORE THE HON'BLE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL
MAHARASHTRA, AT MUMBAI.**

Reference (C. G. I. T.) 2/121 of 2002

- (1) Air India Charters Limited (1)
(2) Air India Ltd. (NACIL) (2) ...First Party
AND
Their workman (MMS) ...Second Party

MAY IT PLEASE YOUR HONOUR:

The Second Party has raised this Reference in respect of the demand submitted by Mumbai Mazdoor Sangh, vide its letter No. B/MMS/211/99 dated 19th March, 1999, on the Management. Both the parties have filed their statement of claim, written statement, etc. However, during the course of pendency of the matter, negotiations took place between the Management of Air India Charters Ltd. and the workmen and the matter is amicably settled between the parties. The Management of Air India Charters has offered the wage-rise and other benefits to the employees. Satisfied with the terms and conditions of employment offered by Air India Charters Ltd. the workmen have decided to withdraw the Reference as agreed with the Management.

In view of the said facts, the employees do not wish to contest the matter and hence they want to get the Reference disposed of. Hence it is prayed that the Reference may please be disposed of settled amicably between the parties.

MUMBAI:

Dated: 13-03-2009

J. P. SINGH, Secretary,
Mumbai Mazdoor Sangh

Signatures of AICL Staff:

Sr. No.	Name of Staff	Staff No.	Signature
1.	Moreswar S. Bhatkar	2060	
2.	Rajkumar K. Sable	2046	
3.	K. C. Sasi	2052	
4.	Baban K. Bhandari	2019	
5.	More Rakesh J.	2048	
6.	Sansar S. Piwhal	2045	
7.	Suryakant N. Nilakhe	2043	
8.	Sunil P. Chavan	2057	
9.	Rajendra A. Gavankar	2059	
10.	Vijay G. Shinde	1006	
11.	Baljinder A. Singh	2028	
12.	Prashant Dattaram Vichare	2011	
13.	Vinesh Mangaldas Acharya	1005	
14.	Rahul Mahadev Holkar	2058	
15.	Dinesh Ramchandra Dubal	2047	
16.	Jitendra Y. Londhe	2022	
17.	Uday R. Trivedi	2051	
18.	Ramesh Ramchandra Godse	2053	
19.	Viresh Shursen Pol	2055	
20.	Ramchandra Baliram Tawde	2050	
21.	Baban Maruti Desai	2042	
22.	Mahendra Pralhad Jagtap	2049	

The above signatures are made in our presence and we identify the same.

(1) Rajindra A. Gavankar

(2) Prashant D. Vichare

Identify signi. of Mr. R. Gavankar & P. Vichare

—Sd—

S. S. Chaubal, Adv.

नई दिल्ली, 15 अप्रैल, 2009

का.आ. 1348.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. इंडियन एअरलाइंस के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या-1, कोलकाता के पंचाट (संदर्भ संख्या 36/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-04-2009 को प्राप्त हुआ था।

[सं. एल-11012/96/2000-आई आर (सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 15th April, 2009

S.O. 1348.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the award (Ref. No. 36/2000) of the Central Government Industrial Tribunal/Labour Court No. 1, Kolkata now as shown in the Annexure in Industrial Dispute between the employers in relation to the management of M/s. Indian Airlines and their workmen, which was received by the Central Government on 15-4-2009.

[No.L-11012/96/2000-IR(C-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL AT KOLKATA**

REFERENCE NO. 36 OF 2000

Parties: Employers in relation to the management of
M/s. Indian Airlines Ltd.

And

Their workman

Present : Mr. Justice C.P. Mishra, Presiding Officer

APPEARANCE

On behalf of the : Mr. R.N. Majumder, Advocate with
Management Mr. G. Chakraborty, Advocate

On behalf of the : Mr. M.S. Dutta, Advocate
Workman

State : West Bengal

Industry : Civil Aviation

Dated : 31st March, 2009.

AWARD

By Order No. L-11012/96/2000-IR (C-I) dated 29-8-2000 the Government of India, Ministry of Labour in exercise of its powers under Section 10 (1) (d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

" Whether the action of the Indian Airlines Ltd., Eastern Region, Calcutta in terminating the services of Shri Santimoy Sengupta w.e.f. 1-3-1999 is legal and justified ? If not, to what relief is he entitled?"

2. This reference has been made at the instance of Shri Santimoy Sengupta the concerned workman. The case of the workman as it appears from his written statement is that in the year 1992 Indian Airlines, Eastern Region invited applications through Newspaper for appointment of Clerks having qualification of Diploma in Civil Engineering. In response to it he applied for one of the post and was selected and appointed in terms of an appointment letter dated 17-2-1993 and he accordingly joined the service on 1-3-1993 at Dum Dum Airport. Though in view of the appointment letter his initial engagement was for a period of one year, but the same was continued till 28-2-1999 without any break. The workman worked continuously during the period 1-3-1993 to 28-2-1999 and was doing perennial nature of job. The management, however, with a mala fide motive to circumvent the provisions of the Industrial Disputes Act, 1947, hereinafter to be referred as the Act, showed his employment as "Contractual employment" which was actually a mechanism to frustrate his claim to become a regular or permanent against the

job. The terms of appointment letter dated 17-2-1993 were camouflage to circumvent the provisions of the Act which confers permanency to a workman who continuously works for 240 days and/or payment of compensation for his retrenchment in terms of provisions of Section 25F of the Act. According to the workman the action of the management in terminating his services was a 'retrenchment' within the meaning of Section 2 (oo) of the Act and since admittedly the management failed and neglected to pay him retrenchment compensation and/or notice pay as mandatorily required under Section 25F of the Act, it is invalid, inoperative and void in the eye of law. The action of the management is said to be vitiated for violation of Section 25G of the Act as many persons junior to him. He worked there continuously for 6 years and as such his livelihood fully depended upon his income and due to the wrongful termination of his service, he is virtually starving with his family members. The workman made several verbal and also written representations to the management but the same were not considered by the management. When the management did not pay any heed to his cry, the workman raised a formal industrial dispute before the Regional Labour Commissioner (Central), Kolkata and the conciliation proceedings were held to settle the dispute amicably but it ended in failure due to adamant attitude of the management's representative. Ultimately, the present reference has been made to this Tribunal for adjudication of the dispute under reference. The workman prayed that the issue under reference be answered in favour of the workman and he be granted relief of reinstatement in service with full back wages along with other incidental benefits.

3. The management of Indian Airlines Ltd. has also filed a written statement denying and disputing the claims and contentions of the workman in this regard. It is stated that the present order of reference is without and/or in excess of jurisdiction and nullity it suffers from error apparent from the record and it has been made without application of mind. The order of reference is also said to be based on misconceived interpretation and erroneous understanding of provisions of law and is a product of misapplication of relevant materials and is capricious. The dispute is also said to be not maintainable as an industrial dispute as the same cannot be said to have assumed the character of an industrial dispute because it has not been sponsored by any union representing the employees of the Indian Airlines.

On merits it is the case of the management that erstwhile Indian Airlines was a statutory Corporation established under Section 3 of the Air Corporation Act, 1953 since repealed by the Air Corporation (Transfer of Undertakings and Repeal) Act, 1994 with effect from 29th January, 1994. The management after obtaining previous approval of the Central Government framed various rules and regulations and it also framed Recruitment and Promotion Rules for its employees. Rule 9 of the same

deals with the steps to be taken for the purpose of making direct recruitment. The management undertook several civil engineering project works in the year, 1992 and since it did not have adequate manpower to cope with the requirement of those time-bound project works an advertisement was published in 'The Statesman' dated 31st May, 1992 for engagement of Clerk of Works (Civil) on contractual basis. It was specifically mentioned in the said advertisement that the appointment will be on contractual basis for a period of one year, extendable for the duration of the construction work. No age bar was mentioned in the advertisement whereas for filling any permanent post in the Indian Airlines the maximum age limit was 30 years for general category employees and 35 years for SC/ST category. It is pointed out that in the Recruitment and Promotion Rules neither there is any post of Clerk of Works (Civil) nor there is any provision for such contractual engagement. The concerned workman applied to the said post by his application dated 4-6-1992 declaring his date of birth as 21-3-1992 and as such he was of 46 years of age at the time of making the said application. Thereafter on the basis of an interview he was found suitable for such engagement and he was issued a letter dated 17-2-1993 stating that the management was agreeable to avail of the services of the concerned workman as "Clerk of Works" on contractual basis on the terms and conditions mentioned therein. The heading of the said letter was "Contract for Services as Clerk of Works". The terms of his engagement was specifically mentioned in the letter itself. Since the specified projects were not completed, the above contract was extended for a period of one year at a time on the same terms and conditions as contained in said letter. On each occasion the workman concerned was informed that this contract was due to lapse on the expiry of the contractual period and he was advised to intimate whether he was interested in renewing the contract. On each occasion upon the written response of the workman concerned requesting that his contractual service be extended, the said contract for service was renewed from time to time. Since there was no further requirement of the job for the Clerk of Works for which he was engaged, on the expiry of 28-2-1999 the said contract was not renewed and consequently the said contract automatically came to an end. The management denied the claims and contentions of the concerned workman as made in his written statement in seriatim. It is stated that the contract between the parties was a contract for service and not a contract of service and as such the concerned workman cannot be termed as a 'workman' under the provisions of the Act. Even assuming for argument sake but not admitting that the concerned workman was a workman within the meaning of the Act, discontinuance of his engagement cannot be termed as 'retrenchment' in terms of Section 2(oo)(bb) of the Act so as to call for

compliance of requirement of Section 25F of the Act by reason of his working for 240 days in a calendar year. It is further stated that the concerned workman was fully aware of the fact at the time of entering into contract for service that his engagement was for a limited period and he cannot be said to have any expectation for continuance in his engagement. Therefore, it is stated that the workman concerned is not entitled to any relief and the reference be answered accordingly.

4. A rejoinder has also been filed by the concerned workman denying the claims and contentions of the written statement of the management and also reiterating his own case made in his written statement.

5. Santimoy Sengupta the concerned workman examined himself as WW-I as his sole witness in support of his case. He stated that he had joined the Indian Airlines, Kolkata on 1-3-1993 as a Clerk of Works. He had applied for such appointment on the basis of an advertisement and thereafter he was interviewed and appointed by an appointment letter. He was posted at New Technical Area, Dum Dum. He, however, was retrenched on 1-3-1999 without any notice or compensation. He had worked continuously from the date of joining till the date of termination. Four persons junior to him were retained, but he was retrenched. After such retrenchment, he is not working anywhere. He prayed for his reinstatement with full back wages. In cross-examination he stated that he applied pursuant to the advertisement in the Statesman dated 31-5-1992 and it was mentioned in the advertisement that the appointment will be on contractual basis for one year extendable for the duration of the construction work. In the appointment letter it was mentioned that his appointment was for one year only and he accepted the same by making endorsement in the appointment letter itself. Thereafter the contract was being renewed from time to time for one year on each occasion. Finally, on 6-3-1998 a fresh contract was issued through a letter of appointment wherein it was mentioned that my contract shall automatically come to an end on the expiry of the contract period of one year from renewal or joining whichever was earlier. In April, 1999 he was told that his term was going to end and the management had written to Delhi for extension but no such extension was made. He denied that his service came to an end because the contract had expired and there was no question of his retrenchment.

6. MW-I, Bidhan Chandra Biswas a Deputy Manager, Personnel in the Indian Airlines at Kolkata is the sole witness for the management. He referred to the Recruitment and Promotion Rules of the Company, Ext. M-1 and stated that there is no post in it known as Clerk of Work (Civil). People are engaged on this post on contractual basis for doing some project works which are of temporary nature. They were on consolidated payment and not supposed to be members of the Provident Fund Scheme. The concerned workman happened to be an employee as Clerk of Works (Civil) and his services were

extended from time to time, but on completion of the project work his service was terminated. According to him there is no justification in the claim of the workman. He, however, stated that he did not deal with the appointment of the workman concerned. In cross-examination the witness has stated that to such employees appointment letters are issued where the conditions are mentioned and generally such appointment is made for one year. In case of removal within the stipulated period, according to the terms mentioned in the appointment letter, the person concerned has to be given notice or payment in lieu of notice. The concerned workman started working in 1993 and terminated in 1999. The witness stated that for the first time after the expiry of the period of one year, the period was extended for further one year and till 1998 and it continued to be extended. The extension was preceded by a letter asking for his option to renew the contract. However, the service of the workman was continuous and there was no break. It was not known by him for which project the workman concerned was appointed.

7. Certain documents have been exhibited on behalf of workman and also the management. Out of the documents exhibited by the workman Ext. W-1 is his appointment letter dated 17-02-1992; Ext. W-2 is his joining report dated 01-03-1992; Ext. W-3 is his representation dated 21-06-1999 to the General Manager (Personnel), Indian Airlines, Kolkata regarding termination of his service and Ext. W-4 is a Letter dated 12-07-1999 of the workman concerned to the Regional Labour Commissioner (Central), Kolkata raising the industrial dispute in the matter.

On the other hand, documents exhibited on behalf of the management are Ext. M-1, Indian Airlines Corporation Recruitment and Promotion Rules; Ext. M-2, copy of the advertisement in *The Statesman* dated 13-05-1992; Ext. M-3, application dated 04-06-1992 of the concerned workman along with its enclosures; Ext. M-4, letter of the management dated 17-02-1993 addressed to the concerned workman regarding contract for service as Clerk of Works; Ext. M-5, a letter dated 09-03-1994 written by the management to the concerned workman regarding extension of contract for service; Ext. M-6, a letter of the management dated 14-02-1995 addressed to the concerned workman asking for option from him to renew the contract; Ext. M-7, the reply of the workman dated 1/16-02-1995 to the management opting for extension; Ext. M-8, a letter dated 21-02-1995 of the management to the concerned workman extending the contract; Ext. M-9, another letter of the management dated 11-03-1996 to the concerned workman asking for option from him to renew the contract; Ext. M-10, option dated 13-03-1996 of the concerned workman for extension; Ext. M-11, another letter of the management dated 12-03-1996 to the workman concerned extending the contract; Ext. M-12, a further letter dated 27-02-1997 of the management to the concerned workman

asking for option from him to renew the contract; Ext. M-13, a similar letter dated 27-02-1997 of the workman concerned like Ext. M-10 opting for option; Ext. M-14, a similar letter dated 06-03-1997 like Ext. M-11 extending the contract of the concerned workman; Ext. M-15, yet another letter dated 04-03-1998 of the management to the concerned workman like Ext. M-12 asking option from him to renew the contract; Ext. M-16, another option of the concerned workman dated 04-03-1998 for extension of contract; Ext. M-17, a letter of the management dated 06-03-1998 to the concerned workman on the subject of contract for service as clerk of work and Ext. M-18 is the joining report of the concerned workman dated 01-03-1998.

8. On the perusal of the aforesaid facts and the evidence led by the parties it is evident that the workman has challenged the termination of his services with effect from 01-03-1999 by submitting that he had worked continuously during the 1st March, 1993 to 28-02-1999, but the management with a *mala fide* motive to circumvent the provisions of the Industrial Disputes Act, 1947, hereinafter to be referred as the Act showing his employment as contractual employment just to frustrate his claim to become a regular or permanent employee against the job. According to him the terms of various appointment letters issued by the management in this connection vide Exts. M-4, M-5, M-8, M-11, M-14 and M-17 were just a camouflage to circumvent the provisions of the Act which confers a legal right to a workman for his permanency in case he had continuously so worked for 240 days and also he may be entitled to get the payment of compensation for his retrenchment, if any in terms of the provisions of Section 2(oo) of the Act. Management, however, did not pay him any retrenchment compensation or notice as it was so required under Section 25F of the Act and the order passed by it for termination of his services is thus clearly vitiated for violation of Section 25G of the Act in view of the fact that many persons junior to him are still working there whereas he had worked there continuously for 6 years but no relief was given to him at all in spite of a representation made by him to the management in this regard. In support of it he has also filed the aforesaid documents and also led his own oral evidence to state the aforesaid facts about it by saying that four persons who were juniors to him were so retained on similar facts and nature of appointment given to them in this regard, but he was retrenched and therefore, he has prayed a relief for his reinstatement with full back wages after setting aside the impugned order so passed against him. It has also been stated by him that he had applied to the post in pursuance to the advertisement dated 31st May, 1992 and it was mentioned therein that his appointment was to be on contractual basis for one year but it was extendable to the duration of the construction work as well in this regard. It has also been stated by him that he had not received any letter or notice terminating his services in this connection but in the month of April, 1999 he was just told that his term was going to end and that the management had written to Delhi for its extension but no such extension was made and so he did not

report for his duty nor the management so offered to him in this connection.

9. The learned Advocate for the workman as such has submitted that the workman having done his work for more than 6 years or so continuously, his services could not have been so dispensed with without complying with the conditions as so prescribed in Section 25F of the Act for this purpose. Such termination of services of the workman thus is clearly illegal, void and inoperative. In support of it he has also placed reliance on a decision of the Hon'ble Apex Court in *State Bank of India Vs. N. Sundaramoney* (1976-1-LLJ 478) wherein the Hon'ble Apex Court in paragraph 10 has clearly so observed about it saying that:

"10. A break-down of S. 2(00) unmistakably expands the semantics of retrenchment, "Termination for any reason whatsoever" are the key words. Whatever the reason, every termination spells retrenchment. So the sole question has the employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination, howsoever, produced. May be, the present may be a hard case, but we can visualize abuses by employers, by suitable verbal devices, circumventing the armour of S. 25F and S. 2(00). Without speculating on possibilities, we may agree that 'retrenchment' is no longer terra incognita, but area covered by an expansive definition. It means 'to end, conclude, cease'".

In this connection, he also referred to yet another decision of the Hon'ble Apex Court in *Mohan Lal Vs. Bharat Electronics Ltd.* (1981-11-LLJ 70) wherein the Hon'ble Court has laid down that in case the workman has satisfied both the eligibility qualifications prescribed in Section 25F for claiming retrenchment compensation and in case he has satisfactorily established that his case is not covered by any such excepted or excluded categories and he has rendered continuous service for one year, the termination of his services would constitute retrenchment. It has also been stated therein that the language of Sub-section (2) is so clear and unambiguous that no precedent is necessary to justify the interpretation. For this it was also held that before a workman could complain of retrenchment being not in consonance of Section 25F, he has to show that he has been in continuous service for not less than one year under the employer who has retrenched him from service. The workman admittedly in this case had not been served with any notice or paid any such amount of compensation and therefore, it has been argued that the order of termination as it was so passed

against the workman is quite illegal and void. The amount of compensation was necessary to be so given to the workman even if the termination of his services had been passed under the aforesaid terms of contract as it has been so held in a recent decision of the Hon'ble Apex Court in *Haryana State Electronics Development Corporation Ltd. Vs. Mamni* (2006-1-LLJ 744) wherein the person who was so engaged as a Junior Technician on ad hoc basis and was also appointed after a gap of few days. Such reappointment was held by the Hon'ble Court not bona fide but with a view to defeat his right under Section 25F of the Act. The Hon'ble Court in this case since did not think it proper to give the relief of reinstatement with full back wages automatically, but a lump sum amount of compensation instead of reinstatement was so awarded to the workman concerned who had been found to have completed 240 days of work during the period of 12 months immediately preceding the date of termination of his services as the conditions laid down under Section 25F of the Act had not been so complied with.

10. The management, however, in this connection has challenged the claim and contentions of the workman by submitting that the appointment of the workman was on contractual basis for a period of one year extendable for the duration of the construction work only. No age bar was mentioned for this and for regular appointment the maximum age limit for general category 30 years and 35 years for S.C. and S.T. categories is so provided. No doubt the workman had been selected on the basis of his selection in the test and found suitable to be appointed for that post, but a letter dated 17-02-1993 was so issued to him clearly stating therein that the management was only agreeable to avail of the services of the workman on contractual basis on the terms and conditions as it was so mentioned therein for this purpose. On each occasion the workman was always informed that the said contract was to lapse on the expiry of the contractual period and he was always directed to intimate whether he was so interested in renewing the contract or not. On each occasion on the request of the workman his contractual service was therefore, extended and lastly on the expiry of the period, i.e., 28-02-1999 the contract was not renewed and so it automatically came to an end. The workman was fully aware of all these facts about it at the time of entering into the contract for service that his engagement was only for a limited period. In view of all this he is not entitled to get any relief as it is so claimed by him. For this the management has also relied upon the own statement of the workman and the witness of the management the Deputy Manager, Bidhan Chandra Biswas, MW-I to say that people who were so engaged on the post of Clerk of Works (Civil) were so engaged on contractual basis for doing a project job of a temporary nature. On the completion of project work the services of such employees could be, therefore, so terminated. It was also stated by him that the appointment was generally for a period of one year and in

case of removal within that period, the person concerned could be given a notice and in lieu of notice payment of compensation otherwise not. It has been however admitted by the witness that the services of the workman had continued without any break for 6 years or so and pleaded his ignorance to tell about any such notice of termination or payment of compensation had been so given to the workman or not. He could not tell about the continuance of the project for which workman had been so appointed in order to show as to whether the said project is still going on or not in order to rebut the claim of the workman that persons junior to him are still working there.

11. Learned Advocate for the management thus relying upon the facts and evidence led by it has thus contended that general principle of contract as applicable to an agreement between the two persons is so applicable to a contract of industrial employment. The workman concerned in view of the said novation of contract cannot be concerned with the earlier contract which was renewed from time to time and his case will only be covered by the fresh contract that was so made with him on 06-03-1998 vide Ext. M-17 for this purpose. Since the contract came to an end by the reason of its non-renewal, the workman has got no legal or contractual right to have the continuance of contract thereafter. This contract cannot termed as retrenchment within the meaning of Section 2(oo) of the Act as sub-clause (bb) of it clearly makes exception that the termination of service of the workman in case had been there as a result of non-renewal of contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein. Sub-clause (bb) thereto was inserted by the Industrial Disputes Amendment Act, 1984 and the decision of the Hon'ble Supreme Court in N. Sundaramony Case (supra) as referred above on behalf of the workman as such is not applicable to the facts of the present case and such cases are outside the scope of retrenchment and the conditions of Section 25F of the Act are not so applicable. He also referred to the case law of AIR 2001 SC 261 (Harmohindra Singh v. Kharga Canteen, Ambala Cantt.) the Hon'ble Apex Court inter alia held as follows:

"15. The argument on the basis of Section 25F is equally misconceived. This section deals with conditions precedent to retrenchment of workmen. It would not apply to para 3-A because of the definition of retrenchment in Section 2(oo)(bb) which expressly excluded "termination of the service of a workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained thereon." Contracts of service for a fixed term are, therefore, excluded. This Court in Upton's case (1998 AIR SCW 1447; AIR 1998 SC 1861; 1998, Lab IC 1543; 1998-II-LLJ 1099) (supra)

has also held that the principles of natural justice are not applicable where the termination takes place on the expiry of the contract. The decision of learned Single Judge of the Punjab and Haryana High Court in Balbir Singh v. Kurukshetra Central Co-operative Bank Ltd. 1990-I-LLJ 443 to the extent that it holds to the contrary is erroneous."

It has been, therefore, argued by the learned Advocate for the management that the service of the workman concerned in this case admittedly came to an end because of the expiry of one year contract as stipulated in Ext. M-17 because of non-renewal thereof and so the case is fully covered by sub-clause (bb) of Section 2(oo) of the Act and it cannot be termed as retrenchment so as to require any compliance of Section 25F of the Act to be made at all by the management in this connection as it has also been held in a recent decision of the Hon'ble Apex Court in (2007) 1 SEE 533 (Gangadhar Pillai v. Siemens Ltd.) wherein it has been observed that:

"It has been furthermore not been denied or disputed that the services of the employees engaged on such terms would come to an end on completion of the period of contract. Such retrenchment would come within the purview of Section 2(oo)(bb) of the Industrial Disputes Act. Once the period of contract was fixed and the same was done keeping in view of the nature of job, it cannot be said that the act of the employer in terminating the services of the appellant actuated by any malice. Such an act on the part of the employer cannot be said to have been resorted to for defrauding an employee. The object of such temporary employment was bona fide and not to deprive the employee concerned from the benefit of a permanent status. We having regard to the fact situation obtaining herein, cannot infer that the findings of the Tribunal as also the learned Single Judge of the High Court were manifestly erroneous of our extraordinary jurisdiction under Article 136 of the Constitution of India."

He also cited another decision reported in (2007) 2 SCC 428 (Punjab State Electricity Board & Anr.) the Hon'ble Supreme Court about the legal position for the applicability of Section 2(oo)(bb) for such appointment and particularly regarding the plea so raised on behalf of the workman saying the contract to be a camouflage by saying that:

"5. Learned counsel for the appellants submitted that without any material, the Labour Court held that the contract was a camouflage. Absolutely no material was placed on record to justify such a stand and/or conclusion. It is not in dispute that there was a contract providing for payment of Re.1 for each meter reading. The contract was renewed more than once. Merely because the meter reading work has not decreased, that cannot be a basis to hold that there was a camouflage adopted.

6. Learned counsel for the respondents on the other hand submitted that both the Labour Court and the High Court have recorded finding about the camouflage.

7. At the outset, it has to be noted that the decision in Steel Authority case has absolutely no relevance so far as the present dispute is concerned. That relates to a case of contract labour. Present dispute is not a case of that nature. On the contrary, it appears from the materials placed on record that there was an agreement governing engagement. The payment was made per meter reading at a fixed rate and there was no regular employment ever offered to any of the respondents. The provisions of Section 2(oo)(bb) of the Act clearly apply to the facts of the present case.

8. Section 2(oo)(bb) reads as follows:

2(oo) 'retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) (b)

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

9. The material on record clearly established that the engagement of the respondent was for specific period and conditional. It appears that on the appointment of regular Meter Readers, the engagement has been dispensed with. The contracts clearly governed the terms of engagement."

12. Considering the aforesaid facts and circumstances and the submissions as it has been so made in this connection by the learned Advocates for both the parties it is evident that the facts relating to the appointment of the workman concerned vide various appointment letters Exts. M-4, M-5, M-8, M-11, M-14 and M-17 as referred to above and so filed on the record go to show that the concerned workman admittedly had been appointed by the Indian Airlines and had continuously so worked during the period 01-03-1993 to 28-02-1999. The terms of his appointment as contained in the document Ext. M-17 which was the last one for the appointment of the workman clearly go to show that he had been appointed to the post of Clerks of Works in the Indian Airlines Ltd. at Kolkata on contractual basis, like the earlier letters of his appointment which was for one year starting from 01-03-1998. It was provided therein that the contractual period was for one year from the date of his joining or upon non-renewal of contract whichever is earlier. The other conditions as it was so mentioned therein are also there but the workman has challenged it by saying that the terms of appointment were camouflaged to circumvent the provisions of the Act which confers permanency to a workman as he continuously so worked for 240 days and for payment of compensation for his retrenchment required to be so paid to him in terms of the provisions of Section 25F of the Act in this regard. The legal position as it so

applies after the amendment of the provisions of Section 2(oo)(bb) incorporated in the year 1984 shows that it is in the nature of an exception to Section 2(oo) and as it was so held by a Division Bench of the Hon'ble Allahabad High Court in Shailendra Nath Shukla v. Vice Chancellor, Allahabad University, 1987 Lab. IC 1607 (All)(DB), the entire object of the Act is to secure a just and fair deal to the workman while adjudicating on the termination of his services for non-renewal of the contract of employment on expiry of the time stipulated in it. The Hon'ble Court has also said that therein that the nature of employment must be judged by the nature of duties performed by the workman and not on the basis of the letter issued by the employer. Section 2(oo)(bb) cannot be extended to cases where the job continues and the employee's work is also satisfactory, but periodical renewals are made to avoid giving regular status to the workman and it would be an unfair labour practice. If contractual employment is resorted to as a mechanism to frustrate the claim of the employee to become regular or permanent against a job which continues or the nature of duties is such that the colour of a contractual agreement is given to take it out from Section 2(oo), then such agreement cannot be regarded as fair or bonafide. In this case too on the facts the Hon'ble Court found that the workmen had been working for nearly 5 years continuously and their job was not seasonal, casual or daily worker and their duties were like that of regular employees. So the termination of their services on the expiry of the stipulated period in the agreement or non-renewal of their contract of employment was held to be not under sub-clause (bb) of Section 2(oo) and amounted to retrenchment.

13. The Learned Advocate for the workman relying on this factual and legal position has argued that the workman in this case had also continuously so worked there from 01-03-1993 to 28-02-1999, i.e., for 6 years or so without any break on the basis of the aforesaid letter of appointment issued in his favour from time to time and it was actually a mechanism to frustrate his claim to become a regular or permanent employee against the job in Indian Airlines. The nature of work done by the concerned workman go to show that his job was like that of a regular employee and no evidence has been led by the management in this connection to show about the project to have been completed or closed so that there could be no such occasion for the continuance of the employment of the workman further in the organization. On the other hand he was rather assured by the management that he was to be given a chance for his absorption or regularization after getting a clearance from the Head Office. Also that 3 or 4 persons junior to him are working there but the service of the workman was terminated just out of malice. The Hon'ble Apex Court also in such cases has already held that automatic termination of service on the efflux of contractual period also amounts to retrenchment [Hindustan Steel v. The Presiding Officer, 1976 SCC (L & S) 583, State Bank of India v. N. Sundaramony (supra)].

14. Looking at the aforesaid facts and legal position as it is so applicable to the case of the workman it is evident that the termination of the services of the workman with effect from 01-03-1999 only on account of non-renewal of the contract cannot be said to be legally justified and proper for want of compliance of the provisions of Section 25F of the Act in this regard. The act of the management in these circumstances amounts to retrenchment as so defined under Section 2(oo) of the Act and it does not come within the purview of Clause (bb) of it. The termination of services of the concerned workman being not in conformity with the provisions of Section 25F of the Act and it cannot be held to be legal and proper and it is clearly a case of unfair labour practice done by the management to defeat the claim of the workman concerned in this case.

15. So far as the relief as so claimed by the workman about it for his reinstatement with full back wages etc. it is however found that even if the termination of his services is held to be not legal or justified as per provisions of Section 25F of the Act, it is not necessary that in all such cases as a general rule the relief of reinstatement with back wages is obvious but as the Hon'ble Supreme Court in number of cases for this has laid down that a pragmatic view in the matter is to be taken by the Courts and by keeping number of factors in mind viz. that an industry may not be compelled to pay to the workman for the period during which he apparently contributed a little or nothing at all. The Hon'ble Apex Court in *Haryana Roadways v. Rudhan Singh* (2005 AIR SCW 4634) has also said that the workman who had only worked for a short period, i.e., less than a year or so and having regard to his other basic qualification etc. back wages were also denied to him although the termination of his service was found to have been made in violation of Section 25F of the Act. The Hon'ble Apex Court also had so observed about the various factors and principles to be considered for awarding the back wages or compensation by saying that:

"There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment, i.e., whether after proper advertisement of the vacancy or inviting applications from the Employment Exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated,

he may be awarded full or partial backwages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period, i.e., from the date of termination till the date of the award, which our experience shows is often quite large, would be inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

In *Allahabad Jal Sansthan v. Daya Shankar Rai* (2005) 5 SCC 124: 2005 AIR SCW 2646 also after considering the relevant cases on the above such plea, the Hon'ble Apex Court has further stated about it that:

"We have referred to certain decisions of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full backwages was the usual result. But now with the passage of time, it has come to be realized that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at."

16. Considering the above facts and circumstances, the concerned workman deserves to be given an amount of reasonable compensation for loss of his job since he was not served with any notice for termination of his job nor he had been so paid any amount of compensation before he was so disengaged by the management in spite of the fact that he had worked for about six years continuously in that organization. The management should have paid him a reasonable amount of compensation as it was so required to be paid to him under Section 25F of the Act. The workman as such instead of getting any such relief of reinstatement in his favour or the back wages, he may awarded a lump sum amount of compensation, i.e., Rs. 20,000 (Rupees Twenty thousand) in his favour. The said amount shall accordingly be paid to the workman by the management of Indian Airlines within a period of one month from the date of this Award becomes so enforceable.

The reference is answered accordingly.

C. P. MISHRA, Presiding Officer

Dated, Kolkata,
The 31st March, 2009.

नई दिल्ली, 15 अप्रैल, 2009

का.आ. 1349.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. बी.सी.सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि करण/श्रम न्यायालय सं. 1, धनबाद के पंचाट (संदर्भ संख्या 20/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-4-2009 को प्राप्त हुआ था।

[सं. एल-20012/548/98-आईआर(सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 15th April, 2009

S.O. 1349.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/2000) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 15-4-2009.

[No. L-20012/548/98-IR(C-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1, DHANBAD

A reference under Sec. 10(1)(d)(2A) of I.D. Act, 1947

Reference No. 20 of 2000

Parties : Employees in relation to the management of
M/s. BCCL

AND

Their Workman

Present : Shri H.M. Singh, Presiding Officer

APPEARANCES

For the employers : None

For the Workman : None

State : Jharkhand.

Industry : Coal.

Dated, the 24th March, 2009

AWARD

By order No. L-20012/548/98-(C-1) dated 20-12-1999 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-sec. (1) and sub-sec. (2A) of Section 10 of the I.D. Act, 1947, referred the following dispute adjudication to this Tribunal.

“क्या बी.सी.सी.एफ., बसेरा क्षेत्र के प्रबंधन द्वारा सर्वश्री नारायण भूईया एवं भारत भूईया को बर्खास्त किया जाना विधिवत्, न्यायसंगत एवं उचित है ? यदि नहीं तो कर्मकार किस राहत के पात्र हैं ?”

2. The reference was received in this Tribunal on 6-1-2000 thereafter, since none appeared on behalf of the workman till 16-1-09 a notice by speed post was sent to the concerned union to file written statement on behalf of the workman. But even 6-3-2009 none appeared on behalf of the work man. It, therefore seems that neither the concerned workman nor the sponsoring union is interested to contest the case.

4. Under such circumstances, I render a 'No Dispute' award in the present reference case.

H. M. SINGH, Presiding Officer

नई दिल्ली, 15 अप्रैल, 2009

का.आ. 1350.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. बी.सी.सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि करण/श्रम न्यायालय सं. 1, धनबाद के पंचाट (संदर्भ संख्या 40/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-4-2009 को प्राप्त हुआ था।

[सं. एल-20012/247/99-आईआर(सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 15th April, 2009

S.O. 1350.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 40/2000) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 15-4-2009.

[No. L-12012/247/99-IR(B-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1, DHANBAD

A reference under Sec. 10(1)(d)(2A) of I.D. Act, 1947

Reference No. 40 of 2000

Parties : Employers in relation to the Management of
Kusunda Colliery of M/s. BCCL

AND

Their Workman

Present : Shri H.M. Singh, Presiding Officer

APPEARANCES

For the employers : None

For the Workman : None

State : Jharkhand.

Industry : Coal.

Dated, the 24th March, 2009

AWARD

By order No. L-20012/247/99-(C-I) dated 20-1-2000 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-sec. (1) and sub-sec. (2A) of Section 10 of the I.D. Act, 1947, referred the following dispute for adjudication to this Tribunal.

“Whether the action of management of Kusunda Area of BCCL in starting enquiry against Sh. Mahan Mandal, workman after ten years of issue of chargesheet and imposing punishment of demotion is just, proper and legal? If not, what directions are necessary in this regard?”

2. The reference was received in this Tribunal on 27-1-2000 and since none appeared on behalf of the workman concerned/sponsoring union to file written statement on behalf of the workman till 19-1-2009, a notice by speed post was sent to the sponsoring union, fixing the case on 6-3-2009. But even on 6-3-2009 none appeared on behalf of the workman. It, therefore, seems that neither the concerned workman nor the sponsoring union is interested to contest the case.

Under such circumstances, I render a ‘No Dispute’ award in the present reference case.

H. M. SINGH, Presiding Officer

नई दिल्ली, 15 अप्रैल, 2009

का.आ. 1351.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. बी.सी.सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 1, धनबाद के पंचाट (संदर्भ संख्या 93/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-4-2009 को प्राप्त हुआ था।

[सं. एल-20012/43/96-आईआर(सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 15th April, 2009

S.O. 1351.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 93/1997) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 15-4-2009.

[No. L-20012/43/96-IR(C-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1 AT DHANBAD**

Present : Shri H. M. Singh, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d)

of the I. D. Act, 1947.

Reference No. 93 of 1997

Parties : Employers in relation to the management of Jealgora Colliery of M/s. BCCL and their workman

APPEARANCES

On behalf of the workman : Mr. K. Singh, Advocate

On behalf of the employers : Mr. D. K. Verma, Advocate

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 23rd March, 2008

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/43/96-IR (C-I), dated, the 1st April, 1997.

SCHEDULE

“Whether the demand of the Union is justified that Shri Garib Nonia and Shri Hare Ram Ojha are eligible for regularisation as Office Peon and Clerk Grade II respectively? If so, to what relief are these persons entitled?”

2. In the Written Statement submitted on behalf of the concerned workmen it has been stated that the concerned workmen Sri Garib Nonia and Sri Hare Ram Ojha are working as Peon and Bill Clerk respectively at Jealgora Colliery. Initially Sri Garib Nonia was appointed as General Mazdoor and Shri Hare Ram Ojha was appointed as Security Guard (T) Jealgora Colliery. However, Sri Garib Nonia was advised to report for duty to work as Office Peon at Jealgora Colliery with immediate effect vide Office Order No. AJ/Adm/120, dated 19/20-1-1991 and since then he has been working as a Peon in the Manager's Office regularly and continuously and Sri Hare Ram Ojha was allowed to work as a clerk (T) against permanent vacancy caused due to retirement of one Sri Babujan Mian, Bill Clerk, Jealgora Colliery as per approval of the then Chief General Manager, Bhowra Area vide Note Sheet No. AJ/NS/XI/91/113, dated 9-5-1991 and since then Sri Ojha has been working as a Bill Clerk (Piece rated worker) continuously. The concerned workmen have been working at Jealgora Colliery as Peon and Bill Clerk for last 7 years continuously with entire satisfaction of the management. Being satisfied with the work of Sri Hare Ram Ojha, the management of Jealgora Colliery has already proposed for his regularisation in clerical Grade II and the said proposal was also accepted by the Chief General Manager, Bhowra Area. The concerned workman Hare Ram Ojha is entitled to be put in Clerical Grade II and he is also entitled for consequential benefits arising out of such placement since 1991. However, the management has lastly regularised the above concerned workman in Clerical Grade III w.e.f. 24-8-96. The

management has unjustifiably put the concerned workman in Clerical Grade III instead of Clerical Grade II from last 1991. It has been submitted on behalf of the workman that had the concerned workman named above been put in Clerical Grade II in 1991 he must have been put in next higher category. They have submitted that the demand of the Union that Sri Garib Nonia and Sri Hare Ram Ojha are eligible for regularisation as Office Peon and Clerk Grade II respectively justified and they are entitled to be regularised as Office Peon and Clerk Grade II since 1991 and prayer has been made to pass an Award accordingly.

3. Management side has also filed their W. S. in which they have stated that the present reference is not maintainable either in law or in facts. It has been stated by them that the demand of the union that Sri Garib Nonia and Sri Hare Ram Ojha are eligible for regularisation as Office Peon and Clerk Grade II respectively is not justified. Accordingly they are not entitled to get any relief. It has further been submitted that the case of Sri Garib Nonia is in respect of his regularisation from T. R. to M. R. Garib Nonia was initially appointed as Miner/Loader. The union RCMS has raised an industrial dispute before the ALC (C), Dhanbad vide Ref. No. 1/151/91/F-5 dated 14-8-91 and after a prolonged discussion a settlement was arrived at on 11-3-92 before the ALC(C), Dhanbad. However, Sri Nonia was regularised as General Mazdoor as per the settlement with the R. C. M. S. and since then Sri Nonia has been working as General Mazdoor. Since as per settlement before the ALC(C), Dhanbad Sri Garib Nonia was regularised as a General Mazdoor, the question of his further regularisation as peon does not arise. In respect of another concerned workman management have submitted that Sri Hare Ram Ojha was initially appointed as Security Guard (T). He was engaged to work as Clerk (T) on leave and sick vacancy. Subsequently for his regularisation in the post of Clerk a notesheet was initiated and finally he was regularised in Clerical Grade III. Thereafter another industrial dispute was raised by the Janta Mazdoor Sangh (JMS) vide letter No. 1/168/94-E-5 dated 10-10-94 on behalf of the above workmen for regularisation on the posts as referred above and the matter of settlement between the RCMS was made explained to the ALC(C), Dhanbad. It has been submitted that the claim of the concerned workmen is not justified and prayer has been made to pass an Award accordingly.

4. Both the parties have filed their respective rejoinders admitting and denying some of the contents of each other's W. S.

5. In order to substantiate their case management have produced and examined Yogendra Prasad as MW-1 who has proved documents marked as Ext. M-1, M-2, M-2/1, M-3, M4 and M-4/1. The concerned workman has produced and examined Hare Ram Ojha as WW-1 and Garib Nonia as WW-2. On their behalf documents have been marked as Ext. W-1 to W-12.

6. In this respect MW-1 has stated in examination-in-chief that Garib Nonia has already been regularised as

per settlement which was acceptable to him also. It has been stated by WW-2 Garib Nonia that there was a settlement in this regard. It shows that there is no other dispute to be adjudicated with regard to the concerned workman Garib Nonia.

7. Main argument advanced on behalf of the concerned workmen is that Hare Ram Ojha has demanded that he should be promoted and posted to the post of Bill Clerk and be regularised because he was engaged to work as Clerk (T) by the management as per management's office order dated 14/17-6-1991 marked as Ext. W-1 which was issued with the approval of the Chief General Manager. There is also notesheet prepared by the Colliery Management on 2/9-5-1991 under the signature of Dy. Personnel Manager as per Ext. W-2 and in this respect the signature of Dy. CME is also there which has been approved by the C.G.M. and from this Ext. W-2/1 it appears that 5 permanent posts of clerks were vacant during the said period. By Ext. W-3 it appears that the performance of Shri Hare Ram Ojha as Bill Clerk was found satisfactory and Bill Clerk comes under clerical Grade II. WW-1 in course of his evidence has stated that had he been placed in Clerical Grade II in the year 1991 then by 1994 he would have been promoted to Clerical Grade I and after three years he would have been promoted in Supervisory Grade. He has also further stated that apart from performing the job of Bill Clerk he had also been assigned with the work of Gratuity Bill Clerk and the work of statistical clerk. In this respect office order Ext. W-4 has been issued on 12-1-99 and there are representations from the side of the concerned workman before the management which have been marked as Ext. W-5 to W-5/2 for his regularisation as Bill Clerk w.e.f. 1991. In this respect MW-1 Yogendra Prasad has stated in his cross-examination that he cannot say if Bill Clerk is in Grade II in clerical cadre. Hare Ram Ojha was deputed to work as Bill Clerk on retirement of Babujan Mian. Babujan Mian retired in the month of April, 1991. He also stated that he does not know when Babujan Mian retired and that there was shortage of four clerks in Jealgora Colliery. He has referred Ext. W-1 by which Hare Ram Ojha was deployed to work as Bill Clerk with the approval of General Manager. He has also referred Ext. W-2 which is a notesheet No. 118 which finds place in Ext. W-1.

8. Rule 41(4) of Coal Mines Regulations, 1957 speaks as follows :—

"The management shall assign to every competent person his particular duties, shall on his appointment make over to him a copy of the regulations, rules and bye-laws and of any orders made thereunder which affect him, and shall take all possible steps to ensure that every such person understands, carries out and enforces the provisions contained therein in a proper manner."

9. Bill Clerk comes in Clerical Grade II as per National Coal Wage Agreement. As per Ext. W-1 which is an office

order dated 14/17-6-1991 shows that management has engaged the concerned workman Sri Hare Ram Ojha Security Guard (T) to work as Clerk (T) on temporary basis with immediate effect and Ext. W-2 is a notesheet dated 2-5-91 in this regard. Vide Ext. W-3 which is a noting sheet shows that the performance of the concerned workman has been found satisfactory as Bill Clerk and vide Ext. W-4 which is an office order dated 12-1-99 the concerned workman was entrusted additional work of Statistical Clerk apart from his work of gratuity Bill Clerk. Ext. W-5, W-5/1 and W-5/2 are the representations submitted by the concerned workman to the management which were considered by them. Vide Ext. M-4 the concerned workman Hare Ram Ojha was placed in Clerical Grade-II from Clerical Grade-III on 6-9-1999 and Ext. M-4 is the note sheet in this regard. Vide Ext. M-3 the concerned workman Hare Ram Ojha has been regularised in Clerical Grade-III w.e.f. 24-8-96. As per Ext. M-2 Shri Garib Nonia has been regularised as Peon in Tech. Supr. Grade 'H' w.e.f. 26-10-2004 as per the terms of settlement for which an office order was issued on 17/18-9-2004 marked as Ext. M-2/1 and that there was a settlement as per Ext. M-1 between the management and Garib Nonia, the concerned workman.

In view of the above discussions I hold that the concerned workman Shri Hare Ram Ojha is entitled to be regularised in Clerical Grade-II from the date he has been working as Bill Clerk with consequential benefits. Regarding Garib Nonia there was a settlement, so no order is required to be passed by this Tribunal. Management is directed to implement the Award within three months from the date of its publication in the Gazette of India.

An Award is passed accordingly.

H. M. SINGH, Presiding Officer

नई दिल्ली, 23 अप्रैल, 2009

का.आ. 1352.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. बी.सी.सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 1, धनबाद के पंचाट (संदर्भ संख्या 194/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-4-2009 को प्राप्त हुआ था।

[सं. एल-20012/305/99-आईआर(सी-1)]
स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 23rd April, 2009

S.O. 1352.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 194/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of M/s. BCCL and their workmen, which was received by the Central Government on 23-4-2009.

[No. L-20012/305/99-IR(C-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1, DHANBAD

In the matter of a reference U/s. 10(1)(d)(2A) of I.D. Act,
Reference No. 194 of 1999

Parties : Employers in relation to the management of
Sijua Area of M/s. BCC Ltd.

And

Their Workmen

Present : Shri H. M. Singh, Presiding Officer

APPEARANCES

For the Employers :	None
For the Workmen :	None
State : Jharkhand.	Industry : Coal
Dated : the 31st March, 2009	

AWARD

By Order No. L-20012/305/99 (C-1) dated 26-11-1999 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the I. D. Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Sijua Area of BCCL in not providing employment to the dependents of late Ram Khelwan Singh, Ex-Chairman and late Lala Nonia, Ex-Clerk both of Loyabad Colliery under Para 9:4:2 of NCWA is justified? If not, what relief the said dependents are entitled to?"

2. The order of reference was received in this Tribunal on 7-12-1999. But till 4-3-2009 none appeared on behalf of the concerned workman in spite of sending notice by speed post. No Written statement has also been filed on behalf of the workmen. It seems that neither the concerned workman nor the sponsoring union is interested to contest the case. This case is pending since 7-12-1999, so it is needless to keep this reference case pending further.

3. In view of such circumstances I render a 'No Dispute' Award in the present reference case.

H. M. SINGH, Presiding Officer

नई दिल्ली, 23 अप्रैल, 2009

का.आ. 1353.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. बी.सी.सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 57/1999)

को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-4-2009 को प्राप्त हुआ था।

[सं. एल-20012/390/98-आईआर(सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 23rd April, 2009

S.O. 1353.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 57/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 23-4-2009.

[No. L-20012/390/98-IR(C-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. I, DHANBAD

In the matter of a reference U/s. 10(1)(d)(2A) of I.D. Act

Reference No. 57 of 1999

Parties : Employers in relation to the management of
Sudamdih Area of M/s. BCC Ltd.

And

Their Workman

Present : SHRI H. M. PRASAD, Presiding Officer

APPEARANCES

For the Employers : Shri B.M.Prasad, Advocate.

For the Workman : Shri U.P. Sinha, Advocate.

State : Jharkhand. Industry : Coal

Dated : the 30th March, 2009

AWARD

By Order No. L-20012/390/98-I.R. (C-I) dated 17-4-99 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the demand of the union from the management of Chandan Open Cast Project of Sudamdih Area of M/s. BCCL for regularisation of Sri Birendra Prasad in clerical Grade-II w.e.f. 11-6-81 and further promotions in higher grade with all fringe benefits is justified? If so, to what relief the workman is entitled?”

2. The concerned workman has filed written statement stating that he was employed at Chandan Open Cast Project of Sudamdih Area, presently Eastern Jharia Area, of M/s. BCCL, who was brought in Clerical Cadre by the management and was placed in Clerical Grade-III of National Coal Wage Agreement w.e.f. 11-6-80. Similarly one Achuta

Prasad of the said mine was brought in the Clerical Cadre and was placed in Clerical Grade-III of N.C.W.A. w.e.f. 18-10-81. The management used to follow the practice to put a person in Clerical Cadre in Clerical Grade-III initially and after completion of the one year service in Clerical Cadre-III used to regularise him in Clerical Grade-II. After completion of one year service Achuta Prasad was regularised by the management in Clerical Grade-II w.e.f. 23-12-82 but the same principle was deliberately not followed by the management in case of the concerned workman. He was regularised in Clerical Grade-II w.e.f. 1-3-84 and due to illegal action of the management the workman became junior to Achuta Prasad, a junior colleague of the concerned workman in Clerical Grade-III. It has been stated that for the purpose of promotion in clerical grades in the post is a main criteria. Therefore, so that no anomaly takes place, the concerned workman should have regularised in Clerical Grade-II prior to Achuta Prasad and as per practice after completion of one year i.e. from 11-6-1981 as was done in case of Achuta Prasad by the same management. Posting in Clerical Grade-III is an entry point in clerical cadre. In view of the aforesaid, the workman is entitled to regularisation in Clerical Grade-II w.e.f. 11-6-81. Cadre Scheme has been formulated by Coal India Ltd. Which is applicable to all the subsidiaries of Coal India Ltd. including B.C.C.Ltd. according to which the concerned workman is entitled to be promoted from Clerical Grade-II to Clerical Grade-I after three years based on seniority at unit level, from Clerical Grade-I to Special Grade ‘B’ based on seniority of Area level after completion of three years service in Clerical Grade-I and similarly in Grade ‘A’ based on seniority at Head Quarter, BCCL, level after completion of three years in Clerical Special Grade. Since the concerned workman was not regularised in Clerical Grade-II as per practice being followed w.e.f. 16-6-81, the union raised an industrial dispute before the A.L.C.(C). But due to adamant attitude of the management the conciliation proceeding ended in failure and the Government of India, Ministry of Labour, referred the dispute for adjudication to this Tribunal. It has been prayed an award be passed for regularisation concerned workman in Clerical Grade-II w.e.f. 11-6-1981 and further promotions as well as consequential benefits.

3. The management has filed written statement stating that by way of preliminary objection the reference is bad in law and not maintainable. There is no valid industrial dispute in the eye of law within the meaning of Sec.2(k) of the I.D. Act, and it should be dismissed in limine being not tenable. The sponsoring union has no locus standi in the matter as the so-called person is not its member and it is not competent to raise any industrial dispute. The reference order also puts the cart before the horse and the opp. party is not required to take any action as envisaged in the reference order. The point in the alleged reference is specified for adjudication and the same deserves to be record subject to Section 10(4) of the I.D. Act and this

Hon'ble Tribunal shall have to confine its adjudication to this point. The reference is an abuse of the process of law. The question which is not directly raised in the reference will not be considered even indirectly while determining another matter. Without prejudice to the aforesaid preliminary objection but strongly relying on the same the employers beg to submit that no dispute was raised by the employee with employer. Any request sent by them to the Government would only be an amount and not an industrial dispute between them and employer. Birendra Prasad, the concerned workman was initially appointed as time-rated worker on and from 17-9-77 was regularised Clerk Grade-III w.e.f. 11-6-80 as Cap Lamp Issue Clerk and was further regularised as Clerk Grade-I in 1990 with notional seniority i.e. w.e.f. 1-3-1984, whereas Achhuta Prasad who was appointed as time-rated worker on and from 1-4-73 was regularised as Clerk Grade-III w.e.f. 18-10-81 and as such Grade-II w.e.f. 23-12-82 on completion of one year period as P.F. Clerk which is the job of clerical Grade-II. The concerned workman has never worked as P.F. Clerk in Sudamdih Shift Mine. Since there was cadre scheme formulated for Cap Lamp issue clerk for further promotion in the next higher grade as such he could not be promoted. In the year 1983 the cadre scheme was formulated by J.B.C.C.I. and accordingly the concerned workman was promoted as Clerk Gr. II in the year 1990 but was given notional seniority w.e.f. 1-3-1984. Since Achhuta Prasad had been working as P.F. Clerk as per his job assignment he was regularised as Clerk Grade-II w.e.f. 23-12-1982. Since there was no cadre scheme prior to 1980 for Cap Lamp Issue Clerk as such the demand of the concerned workman is neither justified nor maintainable in the eye of law and he is accordingly not entitled for any relief.

In rejoinder the management stated that the union has tried to distort the facts and travelled beyond the term of reference and the same deserves no consideration. The question of its justification does not arise at all. The other contents of the paragraphs of the written statement of the workman have been denied by the management.

4. The concerned workman has filed rejoinder stating same facts as has been stated in the written statement. It has been stated that the reference is competent and very much maintainable. Other contents made in the paragraphs of the management have been denied by the workman. It has been stated the workman concerned was brought in clerical discipline prior to Achhuta Prasad. The latter was brought in clerical discipline about more than one year later in clerical Grade-III than the former. As such the natural justice demands that the workman should have been put in clerical Gr. II first than Achhuta Prasad. It has been stated that giving notional seniority w.e.f. 1-3-1984 is illegal act of the management to deprive the workman of his legal right of regularisation in Clerical Grade-II w.e.f. 11-6-81. It has been prayed that the concerned workman is entitled to the relief of regularisation in Clerical Grade-II w.e.f. 11-6-81 with all consequential benefits.

5. The concerned workman has produced WW-1 and proved Exts. W-1, W-2 and W-3. The management has produced MW-1 who has proved Exts. M-1 and M-2.

The concerned workman stated in examination-in-chief "I was appointed at Sudamdih Shaft Mine as Cai. I Mazdoor. I was brought in clerical cadre w.e.f. 11-6-80 and was placed in Grade-III. I was posted in C.M.P.F. Department. After my appointment as Clerk, Achhuta Prasad was appointed as Clerk and posted as CMPF Clerk. Before appointment as clerk Achhuta Prasad was not in Clerical cadre. He was brought in clerical cadre on 18-10-81 as far as I remember. This is the seniority list of the management. I was promoted in Clerk Gr. II w.e.f. 1-3-84 but Achhuta Prasad was promoted in Gr. II w.e.f. 23-12-82. There was no D.P.C. either in the year 1982 or 1984. This is the another letter of the management regarding regularisation from the year 1984 (marked Ext. W-3) I have raised this dispute for the discrepancies mentioned above. My claim is justified."

6. Main argument on behalf of the workman that Achhuta Prasad was promoted earlier who was junior to the concerned workman. In this respect the management's witness MW-1 has stated in cross-examination at page 2 that on the basis of office order dated 11-4-80 the concerned workman was promoted and posted as C.M.P.F. Clerk on temporary basis as per Ext. W-3.

I have not produced any paper to show that he had worked as Lamp Issue Clerk. Moreover, MW-1 has stated in cross-examination that the P.O.'s Clerk and Attendance Clerk are both in Clerical Gr. II. There is person who are in Clerk Grade-II in 1981 has been promoted Technical Grade-A in SC/ST Category. It is not a fact that after one year person Clerical Grade-III should be regularised in Clerk II. It shows from the evidence of MW-1 that Achhuta Prasad was wrongly promoted after one year from Grade-III to Grade-II. As per Ext. M-2 it shows that by office order dated 1/2-9-2004 the concerned workman was promoted to Grade-I. Ext. W-1 shows that the concerned workman was put in clerical Grade-III from 11-6-80 and Achhuta Prasad was put in clerical Grade-III from 18-10-81. Ext. W-3 shows that the concerned workman was brought in Clerical Grade-III and was posted as C.M.P.F. Clerk from 16-6-80. Ext. W-4 shows that DCCP has moved note-sheet that the concerned workman be regularised to the post of Grade-II Clerk giving notional seniority w.e.f. 1-3-84 whereas Achhuta Prasad was regularised to the post Gr. II Clerk w.e.f. 23-12-82. It only shows that the management superseding the concerned workman upgraded Achhuta Prasad to Gr. II Clerk, who was junior to the concerned workman. It shows discriminatory attitude on the part of the management.

7. In view of the discussions made above, I come to the conclusion that the demand of the union from the management of Chandan Open Cast Project of Sudamdih Area of M/s. B.C.C.L. for regularisation of Birendra Prasad in Clerical Grade-II w.e.f. 11-6-1981 and the concerned workman is entitled to be promoted in higher grades with

all fringe benefits with retrospective effect is justified.

The management is directed to implement the award within 30 days from the date of publication of the award.

In the above manner the award is rendered.

H.M. SINGH, Presiding Officer

नई दिल्ली, 23 अप्रैल, 2009

का.आ. 1354.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. बी.सी.सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सख्या-1, धनबाद के पंचाट (संदर्भ संख्या 08/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-4-2009 को प्राप्त हुआ था।

[सं. एल-20012/150/2007-आईआर(सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 23rd April, 2009

S.O. 1354.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 08/2008) of the Central Government Industrial Tribunal/Labour Court No.1, Dhanbad now as shown in the Annexure in Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 23-4-2009.

[No. L-20012/150/2007-IR(C-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. I, DHANBAD

In the matter of a reference U/s. 10(1)(d)(2A) of I.D. Act,
Reference No. 8 of 2008

Parties : Employers in relation to the management of E.J.
Area of M/s. BCC Ltd.

And

Their Workmen

Present : SHRI H. M. SINGH, Presiding Officer

APPEARANCES

For the Employers : None

For the Workman : Shri M.N. Rawani, Joint
Secretary (C), Rashtriya
Mazdoor Union.

State : Jharkhand. Industry : Coal

Dated : the 31st March, 2009

AWARD

By Order No. L-20012/150/2007-I.R. (C-I) dated 25-2-2008 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the

Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the Management of Bhowra (N) Colliery of M/s. BCCL in dismissing Shri Sanjay Bhuia, M/Loader from the services of the company w.e.f. 30-8-2005 is legal and justified? If not, to what relief is the concerned workman entitled?”

2. This reference was received in this Tribunal on 12-3-2008. Instead of filing written statement Shri N.N. Rawani, Joint General Secretary (C), Rashtriya Mazdoor Union appearing on behalf of the concerned workman filed a petition on 4-2-2009 praying to drop the case as the management is agreeable to settle the case. Therefore, it appears that there exists no dispute between the parties.

3. In view of such petition and submission made by the Union, I pass a ‘No Dispute’ Award in the present reference case.

H.M. SINGH, Presiding Officer

नई दिल्ली, 23 अप्रैल, 2009

का.आ. 1355.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. बी.सी.सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सख्या-1, धनबाद के पंचाट (संदर्भ संख्या 205/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-4-2009 को प्राप्त हुआ था।

[सं. एल-20012/333/99-आईआर(सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 23rd April, 2009

S.O. 1355.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 205/1999) of the Central Government Industrial Tribunal/Labour Court No.1, Dhanbad now as shown in the Annexure in Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 23-4-2009.

[No. L-20012/333/99-IR(C-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. I, DHANBAD

In the matter of a reference U/s. 10(1)(d)(2A) of the
I.D. Act, 1947

Reference No. 205 of 1999

Parties : Employers in relation to the management of P.B.
Project of M/s. BCC Ltd.s

And
Their Workmen

Present : SHRI H. M. SINGH, Presiding Officer

APPEARANCES

For the Employers : Shri D.K. Verma, Advocate.
For the Workman : Shri Kapildeo Dusadh,
Secretary of the sponsoring
Union.
State : Jharkhand. Industry : Coal
Dated : the 31st March, 2009

AWARD

By Order No. L-20012/333/99 (C-I) dated 2-12-99 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the demand of Union for regularisation of Smt. Dalali Devi as a Despatch Clerk with consequential benefits from the management of P.B. Project of M/s. B.C.C.L Ltd. is proper and justified? If so, to what relief the concerned workman is entitled?”

2. The reference was received in this Tribunal on 13-12-1999. The written statements have been filed by both sides. Therefore on 30-1-2009 Sri Kapildeo Dusadh, Secretary of the sponsoring union appearing on behalf of the workman filed a petition stating there in that the case is likely to be settled between the parties and it has been prayed that they do not want to contest the case further.

3. In such circumstances, I pass a ‘No Dispute’ Award in the present reference case.

H.M. SINGH, Presiding Officer

नई दिल्ली, 27 अप्रैल, 2009

का.आ. 1356.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 53/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-4-09 को प्राप्त हुआ था।

[सं. एल-12012/79/94-आई आर(बी-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th April, 2009

S.O. 1356.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 53/94)

of the Central Government Industrial Tribunal No. 1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 24-4-09.

[No. L-12012/79/94-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH**

Case No. I.D. 53/94

The General Secretary,
Central Bank of India Employees Union, Punjab,
103, Palika Vihar, Ambala (Haryana) ...Applicant

Versus

The Regional Manager,
Central Bank of India, Regional Office,
Jalandhar, (Punjab), 470, Lajpat Nagar Market,
Jalandhar (Punjab) ...Respondent

APPEARANCES

For the workman : Sri Sandeep Bhardwaj
For the management : Sri N. K. Zakhmi

AWARD

Passed on 24-2-2009

Government of India vide notification no. L-12012/79/94-IR(B-II), dated 29-6-1994, referred the following industrial dispute for judicial adjudication to this Tribunal :

“Whether the action of the management of Central Bank of India, Jalandhar in imposing the penalty of stoppage of one increment with cumulative effect on Shri Vinod Kumar Aggarwal, Clerk vide order dated 11-5-92 is justified? If not, what relief is the said workman entitled to ?”

In this reference parties were afforded the opportunity for adducing evidence, but none of the parties preferred the same as per the provisions of the law. Workman and representative of the management filed their respective affidavits along with certain documents but the witnesses were not subjected to the cross-examination. Accordingly, vide order dated 10-12-2008, the evidence of both of the parties was closed with the directions that the witnesses were not subjected to the cross-examination, accordingly, the affidavits filed by them shall not be considered. Thus, it is a reference which is to be adjudicated just on the basis of the materials on record meaning thereby, documentary evidence.

I have heard learned counsel for both of the parties. It has been contended by learned counsel for the workman that enquiry officer, while conducting the enquiry and submitting the enquiry report has acted on surmises and conjecture. The enquiry officer has relied upon the statement given by certain witnesses before another enquiry officer Shri S.N. Vikral. Without recording the evidence of Shri S.N. Vikral, the preliminary enquiry officer/fact finding officer, and without providing the opportunity to the workman for cross-examination of Shri S.N. Vikral, his report was relied upon by the enquiry officer against the principle of natural justice. It has further been argued by learned counsel for the workman that the statements of Shri Vikas, Subhash, Vijay and Suresh were also relied upon without giving opportunity to the workman for cross-examination.

Learned counsel for the management has argued that Shri Vikral has not conducted the enquiry but it was a fact finding report given by him and reliance placed on his report without recording his evidence by the enquiry officer is not against the principle of natural justice.

Entire proceedings and enquiry report are on record. On perusal of the entire records, it is evident, that the workman was charged for three counts as follows :

- (1) On 6-5-91 at about 10.30 AM Shri. V.K. Aggarwal insulted Shri K.C. Gupta officiating branch manager in Branch Manager's cabin by shouting loudly that you serve cold drinks to customers like Shri Suresh Kumar Joint Secretary, Kucha Arhtia Association who was sitting in the cabin and discussing the term loan proposal of M/s. Radhey Sham and Sons Rice Sellers but we have no requirement of such like depositors in the bank.
- (2) Again on 16-5-91 at about 11.00 AM Shri Aggarwal instructed Shri Baldev Singh Armed guard Ferozepur Cantt. Branch to station himself at the entrance of the bank's counter and not to allow the entry of customers well known to the bank. On the instigation of Shri Aggarwal, Shri Baldev Singh Armed guard caught hold on the hand of Shri Pawan Kumar of M/s. S. S. Traders Ferozepur Cantt. who came in the bank and wanted to contact Mr. Vijay Pal, Officer Ferozepur Cantt. branch in connection with CDS (IPP) statement and insulted him by saying that he cannot go further otherwise he will throw him out. Thus, Shri Aggarwal transgressed his official capacity.
- (3) Again on 7-5-91 at about 4.00 PM when Shri Basant Lal, Cashier, Shri Suresh, Joint Secretary, Shri Vishnu Bhagwan, President and Shri Suresh Chander, Secretary of Ferozepur Cantt. Kucha Arhtia Association, Anaj Mandi, Ferozepur Cantt. who called on personally in the bank and

met Shri Aggarwal regarding the happening of 6-5-91, Shri Aggarwal went to the extent saying angrily.

"JO TUM SE HOTA HAI TUM KAR LO
JO HUM SE HOGA HUM KAR LAE GHE :"

The above acts of Shri Aggarwal created riotous and disorderly behaviour in the bank premises and he has failed to show proper courtesy towards superior and valued customers while discharging his duties in the bank.

After the charge sheeting the workman, by corrigendum dated 29-6-91, the charge of the workman under clause 19.7(j) was substituted under para 19.5 (C) of Bipartite Settlement. It was also challenged by the workman that without opportunity of being heard the charge was amended.

On perusal of entire proceedings of enquiry conducted by the Enquiry Officer, I am of the view that the Enquiry Officer afforded the proper opportunity of being heard to the workman. The workman or his representative was present almost on all the dates fixed by the Enquiry Officer for conducting the enquiry. He cross-examined all the witnesses of the management. He was also afforded the opportunity for adducing the evidence in defence. He was further afforded the opportunity for filing the written briefs. Thus, the Enquiry Officer conducted the enquiry in a very fair, proper and reasonable manner affording all possible opportunity of being heard. Accordingly, I am of the view that enquiry was conducted by the Enquiry Officer in a fair, proper and reasonable manner and there has been no violation of principle of natural justice.

But the way the Enquiry Officer has given its finding proved the contention that there is a difference in conducting the enquiry and decision making of the Enquiry Officer on evaluation of the evidence. In this case charge nos. 1 & 3 were held to be proved, whereas, it was held by the Enquiry Officer that management has not proved the charge no. 2. On perusal of the entire proceedings, the Enquiry Officer rightly held that the charge no. 2 was not proved by the management against the workman.

On charge no. 1, the evidence of the manager, who was misbehaved by the workman was recorded by Enquiry Officer. The rest of the witnesses were not recorded by the Enquiry Officer and no opportunity for cross examination was afforded. Likewise, on charge no. 3, the Enquiry Officer only believed on the fact finding enquiry report made by Shri S.N. Vikral without recording the evidence of Shri Vikral. Shri Vikral was not subjected to cross-examination by the workman during the departmental proceedings. Thus, the Enquiry Officer has committed an illegality considering the report of Shri Vikral without putting him to cross-examination by the workman during departmental proceedings. The other witnesses whose

statement were recorded by Shri Vikral were not examined by the Enquiry Officer, whereas, the statements made by them before Shri Vikral were relied upon. It was against the principle of natural justice to rely upon the statement made to Shri Vikral who had not been subjected to cross-examination in the departmental proceedings conducted by the Enquiry Officer. Thus, on Charge no. 3 the Enquiry officer has illegally held the charge to be proved against the workman because there was no evidence before the Enquiry Officer to be relied upon. The evidence which was recorded by Shri Vikral, in the so called fact finding enquiry proceedings cannot be the base for the enquiry Officer to prove the Charge no. 3 against the workman. Accordingly, I am of the view that Enquiry Officer has wrongly held the Charge No. 3 to be proved against the workman.

So far as the Charge No. 1 is concerned, the manager who was said to be misbehaved was examined and cross-examined by the Enquiry Officer during departmental proceedings. Full opportunity of cross-examination was given to the workman and the same was availed.

I have gone through the entire cross-examination. There is no reason before this Tribunal to disbelieve the statement of the manager Shri K.C. Gupta, MW2.

The proceedings before the Tribunal are of different nature than that of the Civil Court. The statement of single witness, if credible, can be relied upon and it can be the sole basis of the punishment. No corroboration is required in departmental proceedings if the statement, as stated earlier, is credible. I have gone through the entire statement of Shri Gupta and his statement in my view is credible. There is no reason before this Tribunal to disbelieve the statement of the manager concerned. Accordingly, on Charge No. 1, the Enquiry Officer has rightly held the same to be proved against the workman. Now the legality of the punishment awarded will be judged by this Tribunal on the basis of the Charge No. 1 only. Shri Gupta has misbehaved the branch manager, who has been his senior in the branch in presence of some other persons. So, the punishment of stoppage of one increment was proportionate enough to the committed misconduct and no interferences is called for because the disciplinary authority has already taken a very lenient attitude on punishment. The reference is answered accordingly. Central Government be informed and, thereafter, file be consigned.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 27 अप्रैल, 2009

का.आ. 1357.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक ऑफ इण्डिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों

के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 141/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-4-2009 को प्राप्त हुआ था।

[सं. एल-12011/102/2003-आईआर(बी-1)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th April, 2009

S.O. 1357.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 141/2003) of the Central Government Industrial Tribunal No. 1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 24-4-2009.

[No. L-12011/102/2003-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRAKUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH**

Case No. I.D. 141/2003

The President,
Central Bank of India Employees Union, Haryana,
129 Lal Kurti, Ambala Cantt. (Haryana)-133001 ...Applicant

Versus

The Regional Manager,
Central Bank of India,
106, Railway Road,
Ambala Cantt. (Haryana)-133001. ...Respondent

APPEARANCES

For the workman : Workman in person
For the management : Shri Anil Batra along with
prescribed authority.

AWARD

Passed on 6-3-2009

Central Government vide notification No. L-12011/102/2003-IR (B-II), dated 31-7-2003, has referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of Central Bank of India in lowering down one stage in pay scale for two years in respect of Shri H. N. Rakheja, Clerk is legal and justified? If not, to what relief the workman is entitled?”

2. Case taken up in Lok Adalat. Long discussion took place in Lok Adalat. The workman has withdrawn his present reference with a liberty for raising another dispute. It is agreed in Lok Adalat that the time for raising this industrial dispute till the withdrawal of this reference shall not be considered as delay if the workman is opting for raising another industrial dispute. In view of the above, the present reference is returned as withdrawn. Central Government be informed. File be consigned.

Chandigarh.

6-3-2009

G. K. SHARMA, Presiding Officer

नई दिल्ली, 27 अप्रैल, 2009

का.आ. 1358.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कोलकाता के पंचाट (संदर्भ संख्या 5/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-4-2009 को प्राप्त हुआ था।

[सं. एल-12011/126/99-आईआर(बी-11)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th April, 2009

S.O. 1358.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 5/2000) of the Central Government Industrial Tribunal, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Maharashtra and their workman, which was received by the Central Government on 24-4-2009.

[No. L-12011/126/99-IR(B-11)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 5 of 2000

Parties : Employers in relation to the management of
Bank of Maharashtra

AND

Their workmen.

PRESENT : Mr. JUSTICE C.P. MISHRA, Presiding Officer

APPEARANCES

On behalf of the : None.
Management

On behalf of the : Mr. A. Bhadury, Trade Union
Workmen Representative.

Dated : 18th March, 2009. Industry : Banking

AWARD

By Order No. L-12011/126/99-IR (B-II), dated 21-01-2000 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of Bank of Maharashtra in imposing of warning and stoppage of one increment without cumulative effect on Sh. Santosh Kumar Biswas is legal and justified? If not, what relief is Sh. Biswas entitled to?”

2. This reference has been made at the instance of Bank of Maharashtra Karmachari Sangh, hereinafter to be referred as the union on behalf of Shri Santosh Kumar Biswas the concerned workman. The case of the union in short is that the concerned workman was earlier working in the Chandni Chowk Market Branch, Kolkata of the Bank of Maharashtra, hereinafter to be referred as the Bank and now posted at its Chowranaghee Branch, Kolkata. On 21-06-1995 the management issued a show-cause notice to the workman and he replied to it by denying the allegations made therein, but ignoring the said reply the management issued a chargesheet dated 31-07-1995. The management thereafter without inviting any reply from the workman against the said chargesheet initiated a domestic enquiry and the enquiry was conducted by one Shri Sujit Nath Nandy on 03-05-1996, 28-05-1996 and 25-06-1996. After the enquiry was over a second show-cause notice was issued offering the workman a personal hearing and after the said personal hearing an administrative order was issued by the management on 03-04-1997 imposing the punishment for stoppage of increment for the year 1998 and also warning him for the alleged misconduct. Thereafter the union raised an industrial dispute before the Conciliation Officer and on the failure of the said conciliation proceedings the matter has been referred to this Tribunal for adjudication by the Central Government. According to the union said personal hearing was against the present position of law as no statement and/or submission has been officially recorded there. The union has challenged the validity of the domestic enquiry on the following grounds :

- (a) No First Information Report which is the basis of the show-cause notice and the chargesheet had been annexed to the show-cause notice or chargesheet which violates the principles of natural justice ;
- (b) The procedure to be adopted in the departmental enquiry had not been explained to the workman ;
- (c) No inspection of documents was offered to the workman prior to exhibiting those documents and some of the documents were not supplied to him which are clear instances of violation of natural justice ;

- (d) Chargesheet it self is vague and unspecific and without foundation of truth ;
- (e) The proceedings were not recorded by the Enquiry Officer faithfully and correctly and the objections raised by the workman were not recorded properly and the Enquiry Officer acted as per guidance of the management ;
- (f) No reasonable opportunity was given to the workman during enquiry taking advantage of his inadequate knowledge in respect of departmental enquiry and became scapegoat and victimized; and
- (g) The conclusion drawn by the Enquiry Officer is absolutely perverse and not based on material documents, evidence etc. and the enquiry report is a product of non application of mind, surmise and conjecture and the enquiry was a sham and fake with the sole intention to punish the concerned workman.

According to the union the action of the management in non-granting increment for the year 1998 is arbitrary, unjust, unfair and not based on facts. The other punishment of warning him and recording it in the service file is also arbitrary, unfair and unjust and as a result of which the workman will not be allowed to appear in future promotional examination and will be considered junior most employee and also will be debarred from higher allowance and other benefits in future. It is accordingly prayed that the action of the management in withholding increment for the year 1998 and also the warning letter issued to the workman be held to be unjustified and thus the order of the management in this regard be set aside.

3. The management in its written statement has stated that the reference is not maintainable as the issue in the reference does not constitute an industrial dispute so as to come within the scope of the Industrial Disputes Act, 1947, hereinafter to be referred as the Act. The issue is also said to have been beyond the jurisdiction of the Tribunal to adjudicate the same as it was not stipulated under Second or Third Schedule of the Act. The reference is also said to be not maintainable as it suffers from infirmity and non-application of mind.

Regarding merits it is stated that the workman was working as a Cashier at Chandni Chowk Branch of the Bank. On 17-06-1995 being a Saturday when the business hours are only till 12 Noon the workman was offered assistance by the Branch Manager, but he refused to take it stating that he will manage on his own. At 12.05 P.M. Shri Raju Saha, Clerk in the Current Account Dept. released two cheques of small amount for cash payment. Further one customer, M/s. Siddhartha Electronics approached the Branch Manager for accepting cash for Rs. 20,000 to get the cheque passed which recieved in clearing. Soon after the aforesaid two cheques and cash reached the

counter where the workman was on duty, he shouted at the top of his voice during office hours accusing and abusing the Branch Manager and the said Raju Saha. Thereafter the concerned workman physically assaulted the said Shri Saha in the Bank premises in presence of staff and customers causing injuries to him who was then given medical treatment in the branch premises. According to the management the aforesaid act tarnished the image of the bank since it effected the general reputation of the staff of the bank. Thereafter on the basis of the written complaint dated 17-06-1995 received from the other employee of the Bank a show cause notice was issued to the workman concerned and after being dissatisfied by the cause shown by him, the employer issued a chargesheet against him. The charges were as follows:

Charge No.1:

The act of shouting at the top of his voice in the Branch premises at the colleagues during office hours in the branch in presence of customers is an incident of riotous, disorderly and indecent behaviour in the premises of the bank which is an act of Gross Misconduct under Clause 19.5 (c) of the Bipartite Settlement of 1996 as modified till date.

Charge No. 2:

Committing an act subversive of discipline tarnishing the bank's image, a dastardly act of physical assault on a colleague, an act involving moral turpitude leading to loss reputation and financial cost of the employer Bank. Each of which separately is an act of Gross Misconduct under Clause 19.5(j) of the Bipartite Settlement of 1996 as modified till date.

An enquiry was appointed by the Bank to enquire into the aforesaid charges and opportunity was given to the workman to file his written statement of defence. He was also allowed to be defended by the registered trade union. Thereafter the enquiry was held in accordance with law and after following the express provisions in which all the charges levelled against the workman were proved and as such the order dated 19th March, 1997 was passed there by giving warning to the workman for the first charge and stopping his one increment without cumulative effect. The management has denied and disputed the statements made by the union in its statement of claims in seriatim. It is specifically stated that the workman inspected each and every document which are marked as exhibits and the chargesheet under no circumstances is vague, unspecific of without foundation of truth. The enquiry initiated by Enquiry Officer was not at all under the guidance of the management nor has the workman been made a scapegoat. It is further stated by the management that the hearing on the point of validity of the domestic enquiry should be taken up first because of the reason that if it is found by the Tribunal that the same is good in the eyes of law, the whole matter can be disposed of upholding the impugned

order. Management has also disputed the prayer made on behalf of the workman, it is accordingly submitted that the issue under reference be answered by holding that the reference is not maintainable and the order passed is unambiguous, legal, unbiased and does not suffer from any other flaw.

4. A rejoinder is also filed on behalf of the workman denying the statements made in the written statement of the management. Regarding the facts workman's version of the incident has been stated. It is stated that day was Saturday and though the public banking transaction was upto 12 Noon and in fact the time in question was between 12.p.m. to 12.20 p.m. The alleged two cheques released for cash payments were without any Token and infact those were duly paid by the workman without making any noise or shout at alleged. It is also specifically denied that M/s. Siddhartha Electronics reached the Cash Counter along with Rs. 20000 at that for depositing. It is also denied that the workman abused either the Branch Manager or Shri Raju Saha or physically assaulted said Shri Saha. Instead it is alleged that the said Shri Saha entered cash table/counter unauthorisedly and used filthy languages and threatened the workman. It is further stated that the written complaint dated 17-06-1995 signed by alleged 5 employees and another letter dated 17-06-1995 signed by Shri Raju Saha are manufactured subsequently for the purpose of this case and those were not annexed to the chargesheet which is gross violation of the principles of natural justice.

5. In view of the settled principle of law, as the correctness, legality or validity of the enquiry was challenged on behalf of the workman which was defended by the management, it was decided to have a preliminary hearing on the point of validity of the enquiry and accordingly evidence was ordered to be led and the workman accordingly led evidence on the point. Management, however, chose not to appear either to lead evidence or make its submission in the matter. Thereafter upon hearing both the parties, this Tribunal by an order dated 6th November, 2008 held that the domestic enquiry as held in this case was defective and an opportunity was given to the management to lead evidence in the matter. A liberty was also given to the workman to lead evidence in his defence.

6. In spite of the aforesaid order dated 6th November, 2008 the management did not appear and led any evidence. Workman also led no additional evidence and stated that since the management led no evidence at all to substantiate the charges levelled against the concerned workman, no additional evidence is required to be adduced by them. Representative of the workman prayed for disposal of the reference by passing an appropriate Award and accordingly he was heard.

7. Considering the evidence led on behalf of the workman against whom the punishment of imposing warning and stoppage of one increment was passed by

the management it is evident that it was on account of the two Charges framed against him in this connection that while working as Cashier on 17-6-1995 he had shouted at the top of his voice at his colleague during office hours in the presence of the customers and also that he had made physical assault on a colleague and therefore it was a gross misconduct for which he had been so punished by the management after the enquiry was so conducted by the Enquiry Officer who also found him guilty for that. Workman, however, had challenged the said enquiry to be illegal and defective and as such the plea was taken up as preliminary issue to be considered in this regard before this Tribunal who has found the same to have got force therein vide its order dated 6-11-2008. The management as such was also asked to adduce additional evidence in support of the said charges framed against the workman, but it did not adduce any such evidence further, nor anyone had so appeared on their behalf to show the facts otherwise. The workman particularly has challenged, the enquiry so conducted against him by saying that the concerned officials were not so produced during the enquiry so as to substantiate the charges framed against him. It has also been submitted that the entire proceedings were conducted behind the back of the workman and signature of the parties were not so obtained in all the pages relating to this enquiry. Particularly he has referred to the statement given by the management witness who had stated that a scuffle took place outside the cash cabin and not inside it whereas the other witness MW-2 Shri Raju Saha (complainant) had gone to the place of Shri Santosh Kumar Biswas (concerned workman) and asked him to get out from there and thereupon a scuffle took place inside the cabin. The explanation given by the workman in this connection was that it was a Saturday with short duration of customer service and there was heavy cash receipts and payments. Considering that the Manager had offered him the assistance of some other official, but the workman felt that the day was Saturday and all other tables were also fully loaded and therefore taking help of the other colleague for help shall hamper normal business of customers and so he had not taken the help. That at about 12.20 p.m. Shri Raju Saha without appreciating the difficulties of the workman was releasing cheques for payment to which he had expressed his difficulty. May be that his tone had been a bit louder since he was working in the Cash Cabin and was overburdened and the cash etc. was to be counted. On hearing this Shri Raju Saha sprang off his seat and came to the Cash Cabin uttering filthy and abusing his pay rents by calling names and also manhandled him and therefore to defend himself he just had tried to push him out of the cash cabin as the uncounted cash was also lying there. There was no doubt a scuffle between them and Shri Saha might have sustained some minor injuries like him for which he however did not make any such complaint against Shri Saha who was in fact the aggressor. The workman admittedly is an ex-

serviceman and there has been no such complaint ever against him earlier in the past regarding his work and conduct. The findings given by the Enquiry Officer also go to show that as a cashier it was his duty to keep his cash cabin door closed from inside as per security guidelines and that he was found wanting in this respect. It was also mentioned in his report for this that had cash cabin door being locked from inside, Shri Saha's entry and scuffle and physical assault would not have so taken place at that time. On this findings the charge of shouting at the top of the voice and the physical assault given by the workman was thus found to be so based by the enquiry Officer who did not go to state it and consider these facts in this about the various pleas so taken by the workman in this reference to show his bonafide about this incident as it had really taken place between the two officials on the date due to scuffle of workers in these circumstances.

8. Considering all these facts and the domestic enquiry as found to the defective on and the management was given a further opportunity to adduce its evidence to prove the said allegation made against the workman on merits but it did not choose to adduce any further evidence in this regard at all. The punishments as imposed upon the workman in this connection also go to show that it was just a warning given to him together with an order for stoppage of one increment without cumulative effect which also go to suggest that perhaps the management was also not very much sure about the role of the either side in this scuffle and particularly in light of the plea raised by the workman that the scuffle in fact had taken place in his own cabin while the other workman had so entered there without any authority to do so. In view of that the action of the management in imposing warning and stoppage of one increment as it has been so imposed upon the workman is found to be not based on proper evidence and material to prove the charges as it was so framed against the workman and it deserves to be set aside accordingly.

9. In view of the above the action of the management of Bank of Maharashtra in imposing punishment of warning and stoppage of one increment without cumulative effect on Shri Santosh Kumar Biswas is held to be illegal and unjustified. The Bank is directed to withdraw the said punishment so imposed on the concerned workman and also restore his one increment as it was so imposed upon him vide the impugned order which had been so passed against the workman in this regard.

This is my Award.

Dated, Kolkata, C. P. MISHRA, Presiding Officer
The 18th March, 2009

नई दिल्ली, 27 अप्रैल, 2009

का.आ. 1359.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध

में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 174/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-4-2009 को प्राप्त हुआ था।

[सं. एल-12011/154/2002-आईआर(बी-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th April, 2009

S.O. 1359.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 174/2002) of the Central Government Industrial Tribunal. Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 24-4-2009.

[No. L-12011/154/2002-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

Present : N.K. PUROHIT, Presiding Officer

I. D.No. 174/2002

Ref. No. L-12011/154/2002-IR(B-II) dated 25-11-2002

BETWEEN

The General Secretary,
UP Bank Workers' Organization
3/13, Mothura Nagar,
Aligarh (U.P.)-202001
(Espousing case of Shri Anangpal Singh)

AND

The Divisional Manager,
Canara Bank
Divisional Office, Centre Point
Aligarh (U.P.)

AWARD

23-03-2009

1. By order No. L-12011/154/2002-IR(B-II) dated 25-11-2002 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between The General Secretary, U.P. Bank Workers' Organization, 3/13, Mathura Nagar, Aligarh (U.P.) (Espousing case of Shri Anangpal Singh) and the Divisional Manager, Canara Bank, Divisional Office, Centre Point, Aligarh (U.P.) for adjudication.

2. The reference under adjudication is:

"Whether the action of Canara Bank management, Aligarh in terminating the services of Shri Anangpal Singh, Driver w.e.f. 15th January, 2000 is just, fair

and legal ? If not, what relief he is entitled to?"

3. The case of the workman in brief is that he was appointed to drive Bank's vehicle at Bank's Regional Office, Aligarh in February, 1995 on temporary/daily wage basis and was continued so till February, 1998 when he was sent to the Head Office of the Aligarh Gramin Bank, a subsidiary of the Canara Bank, where he worked for another one year i.e. June, 1999, thereafter, he was again appointed at lead Bank Office, Aligarh w.e.f. 01-07-99 where he worked up to 15th January, 2000. The workman has submitted that he was paid according to his work with the opposite party at their various branches in Aligarh Region. The workman has further submitted that since he has worked as daily rated driver in the various branches of Canara Bank in Aligarh Region, therefore, he is entitled to be regularized as driver in the Canara Bank; and accordingly he has prayed that the management of Canara Bank be directed to regularize him, with, reference to provisions of Industrial Disputes Act, 1947 and decisions of various Hon'ble Courts in respect of temporary/daily rated employees, with all consequential benefits.

4. The management of the Bank has denied, the claim of the workman that he was ever appointed by the bank in capacity of 'Driver' as there is no post of driver in the Bank. Rather it has submitted that there is a designated post of 'Driver-cum-Peon' in the bank on which existing sub-staff of the bank, holding valid driving license, are required to exercise their option for appointment as 'Driver-cum-Peon'. The bank management has specifically mentioned that it has to observed the instructions contained in the Government of India, Ministry of Finance vide their letter dated 30-9-1978 while making recruitment of sub-staff and keeping in mind nature and duration of the vacancy, through Employment Exchange; and in the present case the workman was neither sponsored by the Employment Exchange nor he satisfies the recruitment norms of the Bank, thus, there arises no question of appointing him in contravention of the said mandatory regulations.

5. The Bank has specifically denied that the workman has ever worked, with the Bank, for the duration claimed by him and has submitted that he was engaged by the Managers of lead Bank Office for a total number of 54 days during the year 1995, 1996 and 1999 and has never completed 240 days or more in any calendar year, as such provisions of Section 25 F of the Industrial Disputes Act, 1947 need not be complied with before disengaging the workman.

6. Regarding claim of the workman for having worked from February, 1995 to 15-1-2000 it has been submitted by the Bank that he was engaged by the Executive (s) of the Bank as their personal driver. In this context the management has made a mention towards prevalent policy in the Bank according to which office car is provided to the Executives concerned as a perquisite and it is up to

them to engage a personal driver, if they required any, and the expenses incurred for such engagement is reimbursed to the Executive concerned on their declaration to the effect; and the Bank has no concern regarding engagement or non-engagement of a driver or to whom they engage as driver. Thus, the management has submitted that there is no privity of contract between the answering bank and the individual so engaged and the workman was the personal driver of the Executive concerned, accordingly the workman is not the employee of the Bank and he is not entitled to be regularized in the Bank's service as prayed by him.

7. The workman has filed rejoinder and has reiterated the facts already stated by him in the statement of claim apart from submitting that he was not engaged by any Executive of the Bank rather he was appointed in the Bank as 'Driver' and he was paid accordingly i.e. directly to the workman.

8. The parties have filed documentary evidence in support of their respective claim. The workman has examined himself in support his case whereas the Bank examined Shri R.K. Katyal, Sr. Manager and Shri D. R. Agarwal, Officer in support of their case. The parties cross examined each other's witnesses and forwarded oral arguments. The workman filed written argument in support of his averments whereas the management failed to file any in spite of several opportunities being provide to them.

9. It has been contended in the written argument on behalf of the workman that the workman was appointed as daily wage Driver in February, 1995 in the Regional Office of the Bank, Aligarh and he had worked there from February, 1995 to February, 1998. Thereafter, he was asked to work in the Aligarh Gramin Bank where he had worked from June, 1998 to June, 1999. Thereafter from 1-7-99 to 15-1-2000 he had worked in lead Bank of the Canara Bank. It is further contended that workman had worked continuously for 614 days i.e. from 1-6-98 to 15-1-2000 for 1 year 8 months and six days in the above Gramin Bank and lead Bank as per order of the Regional Manager, Canara Bank. He had worked more than 240 days in a calendar year despite this; his services were dispensed with arbitrarily in violation of Section 25 F of the I.D. Act on 15-1-2000. In support of the contentions reliance has been placed on the following case laws:

- (i) 1986 (4) LCD 427 All. HC, N.C. Srivastava vs. Scooters India Ltd.
- (ii) 1980 (51) FLR 218 SC, Narottam Chopra vs. PO, Labour Court.
- (iii) 1976 LLJ 478 SC, SBI vs. N. Sundramoney.
- (iv) 2005 LAB IC 2279 SC, Bank of Baroda. vs. Ghemarbhaj Harjibhai Rabari.

10. I have given my thoughtful consideration on the submission made on behalf of the Association and case law submitted in support of its contentions and scanned

the relevant material available on record.

11. It is well settled legal position that to attract the provisions of Section 25 F of I.D. Act, 1947, burden of proof is on the workman to show that he had worked for at least 240 days in preceding twelve months from the date of his alleged termination in violation of the said provision. In 1976 L. SC 478 SBI vs N. Sundramoney Hon'ble Apex Court has observed that "if the workman swims into the harbour of S. 25 F, he cannot be retrenched without payment of retrenchment compensation as prescribed therein read with S. 25 B (2). In 1980 (51) FLR 218 SC Narottam Chopra vs. PO, Labour Court, Hon'ble Apex Court has held that termination in violation of S. 25 F of I.D. Act is illegal and workman in such case is entitled for reinstatement. In 1986 (4) LCD 427 N.C. Srivastava Vs. Scooters India Ltd., Hon'ble All. HC has observed that even if services of employee come to an end by efflux of time, it would be a case of retrenchment. Above legal position in the aforesaid case law cited on behalf of the Association is not disputed. It is also well settled law that if a workman during the period of twelve calendar months worked in the industry for not less than 240 days in the period of 12 months, he shall be deemed to have been in continuous service for a period of one year whether or not he has, in fact, been in such continuous service for a period of one year.

12. In back drop of above legal position, it is to be seen whether in present case the workman had worked for at least 240 days in a calendar year or in the period of preceding twelve months from the date of his alleged termination.

13. The case of the workman in his statement of claim is that he had worked in the Canara Bank as driver on daily wage basis from February, 1995 to June, 1998 for the following period:

Year 1995	131 days
Year 1996	142 days
Year 1997	210 days
Year 1998	21 days
	512 days

14. As per his averments made in the statement of claim he had worked as Aligarh Gramin Bank from June, 1998 to June, 1999 and in Lead Bank of the Canara Bank from 1-7-99 to 15-1-2000. Whereas the management has contended that the workman had worked in the Lead Bank for following period:

1995	
21-09-95 to 23-9-95	3 days
12-10-95, 13-10-95 & 16-10-95	3 days
25-10-95 to 28-10-95	4 days
06-11-95, 8-11-95 to 11-11-95	5 days
15-11-95 to 16-11-95	2 days
1996	
1-1-96 to 2-1-96	2 days
15-1-96 to 19-1-96	5 days
1999	
August, 1999	30 days
	54 days

15. The workman has stated in his statement on oath that he was engaged as casual labour in Regional Office at Aligarh in February, 1995 and he had worked there upto May, 1998 as driver in different branches of the Bank. He has further stated that he had also worked as driver at Aligarh and thereafter from 1-7-1999 to January, 2000 for more than 6 months in the Lead Bank of the Canara Bank as per order of the Regional Manager of the Canara Bank. He has also alleged that his services have been terminated without notice in the month of January, 2000. As per statement of the workman he had driven the vehicle Gypsy UP-81 B-7218 belonging to lead Bank of Canara Bank and UP-81-D-0714 & UP-81-8402 belonging to the Aligarh Gramin Bank.

16. In rebuttal, the management witness Sh. R.K. Katyal, who was on deputation as General Manager of the Aligarh Gramin Bank and now working as Sr. Manager in Regional Office of the Canara Bank has stated that there is no post of driver in Carara Bank. The workman had driven the vehicle of the executives and officers of the Bank as personal driver for 54 days only and the amount for the said period had been reimbursed to the concerned officer. He has further stated that since the workman was not employee of the Canara Bank there was no question arises for sending him to Aligarh Gramin Bank. Canara Bank and Aligarh Gramin Bank are two different entities and their Board of Directors are different and ownership and policy are also different.

17. The management witness Sh. R. K. Agarwal, Officer, Lead Bank has also stated that the workman had driven the vehicle of executives of the Bank for total 54 days only. He has further stated that there is no provision of appointment of driver in the Bank. The work of the driver is being taken from sub staff. At present there is only one Gypsy in the lead Bank. He has also stated that on some occasions, the workman had driven the vehicle of the Bank whenever such necessity arises and for that payment was made to the workman directly. But, whenever he drove the vehicle of the executive the payment was made to the concerned executive of the Bank as reimbursement.

18. It is pertinent to mention that as per version of the workman he had worked in the Canara Bank as casual driver during the period February, 1995 to February, 1998 only. He has not stated in his statement on oath the actual days he had worked as casual driver in said period but in his statement of claim he has mentioned that in the years 1995, 1996, 1997 and 1998 he had worked only for 131, 142, 213 and 21 days respectively. In this regard he has produced some vouchers in support of his statement. From perusal of above vouchers it reveals the documents 15/7 and 15/8 are debit slips of the Canara Bank dated 1-10-96, 9-12-96, 1-2-97, 1-5-97, 7-9-97 and 29-10-97. The workman has not stated in his statement on oath regarding above debit slips. But the management witness Sh. R. K. Katyal has stated in his statement that document 15/7 is

copies of three vouchers out of them two are not legible only copy of one voucher reveals that Sh. D.K. Sahu has made payment to the workman. Similarly documents 15/8 reveals that copy of vouchers are regarding payment made to Sh. N. Ramani, Divisional Manager for engaging driver and name of the workman is not mentioned therein. He has further stated that voucher dated 1-1-96, 8-1-96 and 9-12-96 are regarding payment made to sri.. D.K. Sahu and payment of voucher dated 1-1-96 has been made to the workman through Sh. D .K. Sahu. Above documents support the case of the management that executives and bank officers used to engage the drivers as personal drivers and amount subject to a limit, was used to be reimbursed to the concerned officer. The workman has produced copies of the log book 15/16 to 15/23 for the period 15-5-97 to 12-12-97. The workman has admitted in his cross examination that neither vehicle number is mentioned nor it bears signatures of the workman or any officer of the Bank. Thus, from the oral and documentary evidence of the workman, it is not proved that workman had worked as casual driver in Canara Bank for the period as claimed by him in the year 1995 to 1998. Moreover, even from the period stated in his claim, it is not evident that he had worked at least for 240 days in the Canara Bank in any calendar year in the year from 1995 to 1998.

19. Now it is to be seen as to whether the workman had worked from June, 1998 to June, 1999 in the Aligarh Gramin Bank as per directions of the Regional Manager of Canara Bank, Aligarh. The workman has stated that the Regional Manager ordered him to work in said Gramin Bank, but no such order has been produced in the evidence. The management witness Sh. R. K. Katyal has stated that no such order could be passed since the workman was not the employee of the Canara Bank. Apart from this the Canara Bank and Aligarh Gramin Bank are two different entities having different Board of Directors and different rules of recruitment. The workman though denied the fact that management of above two Banks is different has admitted that recruitment procedure may be different.

20. The workman has stated that vehicles UP-81-D-0714 and UP-81-8402 belong to Aligarh Gramin Bank and copies of the log book produced by him pertains to above two vehicles. Copies of log book 15/24 to 15/40 are pertaining to vehicle UP-81-D-0714 for the period June, 98 to 31-12-98 and 7-1-99 to 6-4-99. The copies of the log book reveal that cheque book issue register has been converted as log book and it bear signature of the workman and officers of the concerned Bank against only some of the entries therein. Except copies of log book, there is no other documentary evidence to support the statement of the workman that he had worked in Aligarh Gramin Bank from June, 1998 to June, 1999 for atleast 240 days continuously. Even if he had worked in Aligarh Gramin Bank as per log book during period June, 1998 to 6-4-99, it cannot be said that he had worked as casual labour driver

of the Canara Bank because Aligarh Gramin Bank is only a subsidiary bank of the Canara Bank having different management, different recruitment rules. Therefore, on the basis of this ground that he had worked under Aligarh Gramin Bank, the workman cannot be regularized in the Canara Bank.

21. Now coming to the period from July, 1999 to Jan, 2000 during which the workman said to be worked as casual driver in the lead Bank of the Canara Bank it is to be seen whether workman had worked continuously at least for 240 days. In this regard workman has produced the following documentary evidence:

- (i) Photocopy of letter of Agrni Bank, Aligarh dt.8-9-99
- (ii) Photocopy of letter of log book for pulse polio work dt. 23-10-99.
- (iii) Photocopy of letter of log book for election officer duty dt. 16-1-99.
- (iv) Photocopy of bill of Kar Scan Centre No. 1260 dt. 2-8-99.
- (v) Photocopy of bill of Kar Scan Centre No. 1266 dtd.15-8-99.
- (vi) Photocopy of bill of Kar Scan Centre No. 578 dt.15-9-99
- (vii) Photocopy of bill of Kar Scan Centre No. 683 dt. 23-12-99
- (viii) Photocopy of vouchers seven in number.

22. The workman has stated that by the order of Regional Manager he was asked to drive the vehicle of the Lead Bank as casual labour. He has not produced such order. Documents 15/12 to 15/14 are copies of the log book and letter of Lead Bank which show that the workman was driver on the vehicle Gypsy 0741 of the said Bank during election duty from 6-9-99 to 14-9-99. Document 15/5 shows that the workman was driver on the vehicle UP-81-B-7218 deputed for Pulse Polio Programme during 23-10-99 to 24-10-99. Documents 15/9 to 15/11 are copies of the bills No. 1266 dt. 16-8-99, No.1280 dt. 2-8-99, No.578 dt. 25-9-99 and No. 683 dt. 23-12-99 of Kar Scan Centre regarding purchase of parts and accessories of the vehicles. Above bills are in the name of lead bank and bear signature of the workman. The management witness Sh. D. R. Agarwal has admitted that above bills are pertaining to purchase by the workman. Documents 15/12 to 15/14 are debit slips of Canara Bank as under :

Debit slip dt. 23-9-99	500	Ex-15/12
Debit slip dt. 2-9-99	2500	Ex-15/12
Debit slip dt. 4-10-99	2900	Ex-15/12
Debit slip dt. 4-11-99	600	Ex-15/14
Debit slip dt. 4-11-99	2000	Ex-15/14
Debit slip dt. 4-12-99	500	Ex-29/6
Debit slip dt. 6-1-2000	1000	Ex-29/8

23. The management witness Sh. D.R Agarwal has denied this fact that the workman was employee in the lead Bank but he has stated in his cross-examination that above debit slips are regarding payment of wages to the driver of the Gypsy. He has also admitted that amount of debit slip dated 4.10.99 was paid to the workman as driver. He has further admitted that Rupees 1500 on 3.1.2000 and Rs. 1000 on 6.1.2000 were paid to the driver as wages but without original record he could not say to whom said amount was paid.

24. Thus above documentary evidence corroborate the statement of the workman that he had worked from July, 99 to January, 99 as casual driver in the lead Bank of the Canara Bank. But it is evident from the said period itself that he had not worked continuously for at least 240 days as casual driver in the lead Bank during preceding twelve months from the date of his alleged termination 15.1.2000.

25. Admittedly the workman was not appointed as driver against any vacant post following procedure of recruitment. No appointment letter was ever issued to him. His name was not sponsored by the Employment Exchange. In statement of claim he has not alleged that he was disengaged in violation of S. 25 F. He has only claimed relief of regularization therein. Even had he worked for 240 days as casual driver he was not entitled for his above relief claimed in the statement of claim.

26. In view of the above discussion, the workman has failed to prove that he had continuously worked for at least 240 days as casual driver in the Canara Bank and his services have been terminated in violation of S.25 F of I.D. Act, 1947. Therefore, he is not entitled to any relief. The reference under adjudication is answered accordingly.

27. Award as above.

Lucknow.

N. K. PUROHIT, Presiding Officer

नई दिल्ली, 27 अप्रैल, 2009

का. आ. 1360.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक आफ बड़ौदा के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि करण लखनऊ के पंचाट (संदर्भ संख्या 34/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-4-2009 को प्राप्त हुआ था।

[सं. एल-12012/231/2003-आईआर(बी-11)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th April, 2009

S. O. 1360.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 34/2004) of the Central Government Industrial Tribunal Lucknow now

as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 24-4-2009.

[No. L-12012/231/2003-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT LUCKNOW

PRESENT:

N. K. Purohit, Presiding Officer

I.D. No. 34/2004

Ref. No. L-12012/231/2003-IR(B-II) dated: 24-3-2004

BETWEEN

Shri Anoop Kumar S/o Sh. Radhakrishnan
Through Shri R. K. Rawat
M.L.-241, Barra-5
Kanpur (U.P.)

AND

The Asstt. General Manager
Bank of Baroda
Regional Office, 13, Mahatma Gandhi Road
Agra (U.P.)-282001

AWARD

24-03-2009

1. By order No. L-12012/231/2003-IR(B-II) dated: 24-3-2004 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Anoop Kumar S/o Sh. Radhakrishnan, through Shri R. K. Rawat, M.L.-241, Barra-5, Kanpur (U.P.) and the Asstt. General Manager, Bank of Baroda, Regional Office, 13, Mahatma Gandhi Road, Agra (U.P.) for adjudication.

2. The reference under adjudication is:

“Whether the action of the management of Bank of Baroda, Agra in dismissal from service of Shri Anoop Kumar S/o Shri Radhakrishnan w.e.f. 5.10.2002 is legal and justified? If not, what relief is the concerned workman entitled to?”

3. The case of the workman in brief is that he has been carrying out job of peon continuously w.e.f. 28-4-90 in the Farrukhabad branch of the Bank, though he has been paid as daily rated water boy. It has also been submitted by the workman that he also worked as substitute when some regular peon of the Bank proceeded on leave and accordingly he was paid for the duration of

his engagement in addition to his regular payment. Giving details of his working days with the Bank in the year 1990 to 2002 he has alleged that after paying him wages up to 30.9.2002, the workman was re-engaged w.e.f. 04-10-2002 and was paid @ Rs. 70/- per day whereas earlier to it he was being paid @ Rs.60/- per day. The workman has further submitted that even though the nature of work carried out by him was of regular nature and is still prevalent, the management of the Bank adopting unfair labour practice, instead to regularizing his services and giving him consequential benefits, terminated his services orally w.e.f. 05-10-2002 illegally, without giving him one month's notice or notice pay in lieu thereof or any retrenchment compensation. It has been alleged by the workman that the management neither furnished any written order regarding his termination, though he demanded for the same, nor issued work certificate for his working with the Bank. The workman represented against his termination vide his letter dated 22-10-2002 without any outcome; and accordingly he has prayed that his termination w.e.f. 05-10-2002 be declared illegal and he be reinstated with continuity in service and all other consequential benefits.

4. The management of the Bank of Baroda has filed its written statement denying the claim of workman that he was ever appointed by the Bank in capacity of peon or what so ever rather he was engaged and paid by one Shri Satya Prakash, the generator. vendor, who provided generator to the bank on rental basis as such there was no relationship of master and servant between the Bank and the workman. It has specially been mentioned by the Bank that it has definite rules for recruitment/appointment of sub staff cadre by notifying the same to the Employment Exchange and the suitable candidates are selected by the selection committee, amongst the list of candidates provided by the Employment Exchange, for appointment. Since the workman was never been subjected to selection process as such he was neither appointed nor was any appointment letter ever issued to him by the Bank. The management has further stated that the Branch Manager of the Bank without proper authority has availed services of the workman for fetching water and has paid accordingly, but not as salary and this does not confer any right or claim upon the workman for appointment in the Bank. It has been submitted by the Bank that since the workman has never been appointed by the Bank authorities through selection process, thus there arise no question of his working for 240 days in a calendar year or terminating his services; and accordingly the management of the Bank has prayed that the claim of the workman is not sustainable and the reference is liable to be rejected.

5. The workman has filed rejoinder and has reiterated the facts already stated by him in the statement of claim.

6. The parties filed documentary evidence in support of their case. The workman has examined himself in support

of his case whereas the Bank examined Sh. S.K. Talwar, Sr. Branch Manager, Sh. R.D. Jataa, Sr. Branch Manager and Sh. Satya Prakash, Generator Vendor in support of their case. The parties cross-examined each other's witnesses and forwarded oral arguments apart from submitting written argument.

7. The learned representative on behalf of the workman has contended that workman had worked for more than 240 days despite this his services have been terminated in violation of section 25F of the I.D. Act. There is ample documentary evidence on the record to support the claim of the workman. He has further contended that the workman was not an employee of Sh. Satya Prakash, Generator Vendor. He has also contended that an application was moved on behalf of the workman for summoning of 110 original documents from the management as per list enclosed but the management deliberately did not produce original documents, which were in favour of the workman. In support of his contention he has placed reliance on following case laws :

1. 2000 (84) FLR 896 State of U.P. and another Vs. Rajendra Singh Butola and another
2. 2003(97) FLR 202 Kisan Sahkari Chini Mills Ltd., Ghosi, Mau Vs. Presiding Officer, Labour Court, Varanasi & another
3. 2005 (105) FLR 84 Umesh Chandra Vs. Nagar Nigam, Allahabad and another.

8. Per contra, learned representative on behalf of the management has urged that workman was never appointed on the post of peon and no relationship of master and servant ever existed. He has further urged that Farrukhabad main branch of the bank was situated on the first floor of the building where Sh. Satya Prakash, Generator Vendor provided generator facility to the bank on rental basis and the workman was engaged by him as his private servant for operation of generator and payment for operating the generator was made by him. In this regard letter of Sh. Satya Prakash is on the record. He has urged that Bank's main branch at Farrukhabad was closed w.e.f. 30-5-02 and generator services were shifted to Seth Gali branch where water supply was normal as there was no need of water to be fetched from out side. He has also argued that Branch Manager without proper authority has taken the work of fetching water from the workman for which he has paid some amount. It can not be said that he was employed by the bank on salary and this does not give any right to the workman to claim employment in the bank. Moreover, whenever any work was taken by the Branch Manager in personal capacity it was on day to day basis and such engagement does not create any right in favour of the workman. In support of his contentions he has relied on following case laws :

1. 2008 (119) FLR 876) Ramdayal Vs. Principal, Industrial Training Institute.
2. 2006 (109) FLR 156 (SC) State of M.P. & Others Vs. Arjunlal Rajak & others.
3. 1997(76) FLR page 237 Himanshu Kumar Vidyarthi & others Vs. State of Bihar and others.
4. 2006 (110) FLR 803 (SCC) Manager(Now Regional Director, RBI Vs. Gopinath Sharma & another.
5. 2006(110) FLR page 773 RTDC and another Vs. Intejam Ali Zafri.

9. I have given my thoughtful consideration on the rival submissions and case laws of both the sides and perused the relevant record.

10. It is well settled legal position that initial burden of proof is on the workman to set out the grounds to challenge the validity of the alleged termination and to prove that he had worked for more than 240 days in a calendar year. In this regard workman has examined himself and adduced documentary evidence in support of his claim. The workman has stated in his statement on oath that he was appointed in the main branch of Bank of Baroda on 29-4-90 as daily wager by the Daftary. He had worked continuously there upto 4-10-2002 but without any notice and retrenchment compensation, his services have been terminated on 05-10-02. He has further stated that salary was paid through vouchers and earlier he was being paid Rs. 60 per day but later Rs. 70 per day as salary and he was doing work of permanent nature. He was doing the work of opening and closing of the branch, cash peon and bringing cheques and dak. Sh. Satya Prakash himself was operating generator installed in the Bank. The workman has denied that he was an employee of Sh. Satya Prakash. He has also stated that when the bank was shifted to Seth Gali, he had worked there also.

11. In rebuttal, the management witness Sh. S. K. Talwar, Branch Manager has stated that the workman had never worked in the bank on any post. The bank used to purchase water from the workman due to shortage of water at bank's Farrukhabad's branch. He has also stated that no appointment letter was ever issued to the workman. There are rules for regular recruitments and appointments are being made as per those rules. He has also alleged that workman was the employee of Sh. Satya Prakash, Generator vendor and he was operating his generator for which payment was used to be made by Sh. Satya Prakash.

12. The management witness Sh. R. D. Jatan, Sr. Branch Manager has also stated that he was Sr. Branch Manager in the Sethi Gali Branch at Farrukhabad from 1999 to 2003 but the workman had never worked as peon in his tenure. He was also stated that the workman was operating the generator of Sh. Satya Prakash.

13. The management witness Sh. Satya Prakash has deposed that he installed his Generator in the year 1990 in the main branch of Bank at Farrukhabad. Earlier he used to operate the Generator later he engaged a boy for the same and thereafter the workman used to operate his Generator. He has also stated that he had seen the workman working as water boy in the bank. He has further stated that document A-2/22 is, in his own writing but later changed his version and stated that he is not literate. He has also admitted his signature on the above document. He has admitted in cross-examination that he is an employee in the Municipality. He has also admitted that there was no relation of master and servant between him and the workman.

14. In view of the rival contentions in oral evidence of both the side the question thus arises for consideration is as to whether the workman had worked as daily wager for the period as claimed by him in his statement of claim or he was an employee of Sh. Satya Prakash, Generator Operator for operating his generator in the Bank. In this regard documentary evidence adduced by the workman is very relevant to reach on any conclusion.

15. The workman has produced photo copies of 110 documents in support of his statement that he had worked as daily wager from 1990 to 2002. The original document were to be produced by the management as per order dt. 9-2-05 of the Tribunal. But the management has failed to produce the original documents of those copies which have not been admitted by the management. In this regard the management witness Sh. S.K. Talwar has stated that :

“मेरी जानकारी में यह है कि जो छाया प्रतियाँ अनूप कुमार ने यहाँ दाखिल की हैं उनकी मूल कॉपी ट्रेस नहीं हो पा रही हैं क्योंकि बैंक की शिफ्टिंग 01 वर्ष में तीन बार हो गई । इस समय में कई ब्रांच मर्ज भी हुई हैं ।”

16. In such circumstances photocopies of the documents Ex. 1 to Ex. 110 produced by the workman can be considered as secondary evidence. Documents Ex. 1 is the copy of the FD / Short deposit ledger dt. 2-9-2002 in favour of the workman. Ex. 2, Ex. 4 and Ex. 110 are the photos of the bank employees on various occasions which have been produced to show that the workman was also amongst them. Ex. 3 is the representation of the workman dt. 22-10-02 where is he has requested to reinstate him. Ex. 5 is a letter dt. 20-12-98 from the officer of the Bank address to AGM, BOB, Kanpur forwarding application of the workman for the post of peon. Photographs Ex. 2, Ex. 4 & Ex. 110 taken on certain occasions at the Branch already indicate his employment in the Bank. Similarly from copy of short deposit ledger Ex. 1 and representation of the

workman. Ex. 3 and application for appointment it cannot be inferred that he was an employee of the Bank. But documents Ex. 6 certificate dt. 22-10-91 issued by the officer of the Bank stating therein that the workman had worked as daily wager for 14 days during year 1990 and document Ex. 7 letter dt. 28-6-02 of Branch Manager addressed to Branch Manager of PNB wherein request was made to hand over a cheque of Rs. 20 lacs to the workman whose signature were also attested, refute the contention of the management that the workman was only supplying water to the Bank and he was a private servant of the Generator owner.

17. The workman has adduced copies of the following voucher in F. N 288 which are debit slips through which payment have been made to the workman as daily wager and for filling of water etc.

Ex. 08 to Ex. 14	-	2002
Ex. 16 to Ex. 19	-	2001
Ex. 20 to Ex. 23	-	2000
Ex. 24 to Ex. 27	-	1999
Ex. 28 to Ex. 30	-	1998
Ex. 31 to Ex. 37	-	1997
Ex. 38 to Ex. 42	-	1996
Ex. 43 to Ex. 48	-	1995
Ex. 49 to Ex. 51	-	1994

18. Apart from aforesaid documents he has also produced copies of vouchers Ex. 52 to Ex. 73 regarding other sundry charges during years 1994 to 1999 and copies of the bills of Maheshwari Book Depot. Ex. 74 to Ex. 109 bearing his signature.

19. Upon perusal of the aforesaid documents it appears that the workman had remained associated with the Bank from the year 1994 to 2002. It is also evident that during 1996 to 2002 payments have been made to him as daily wager and filling water through debit slips of the Bank.

20. To attract the provision of Section 25-F, it is sufficient if the workman had worked for atleast 240 days from preceding twelve months from the date of his alleged termination. If he succeeds then there is no need to scan the documents pertaining to remaining period.

21. The workman has alleged that his services were terminated without any prior notice or retrenchment compensation in violation of Section 25-F. Following

documents produced by the workman are relevant to show that he had worked more than 240 days preceding twelve months from the date of his alleged termination :

Ex. No.	Voucher date	Wager per day	No. of days	Amount paid
Ex. 8	09-09-2002	60	04	240.00
Ex. 9	09-09-2002	60	03	180.00
Ex. 10	18-10-2002	70	01	70.00
Ex. 11	A 01-03-2002	60	22	1320.00
	B 02-04-2002	60	22	1320.00
	C 01-05-2002	60	24	1440.00
Ex. 12	A 01-02-2002	60	26	1560.00
	B 30-05-2002	60	26	1560.00
	C 01-01-2002	60	24	1440.00
Ex. 13	A 05-08-2002	60	26	1560.00
	B 09-07-2002	60	26	1560.00
	C 28-09-2002	60	27	1620.00
Ex. 14	A 28-08-2002	60	11	660.00
	B 03-09-2002	60	06	360.00
TOTAL			249 days	

22. Aforementioned documentary evidence adduced by the workman falsify the statement of management witness Sri. S. K. Talwar that the workman did not work as daily wager and the bank used to purchase water only from him and he was an employee of the Generator owner. It is evident from the above documents that payments through voucher have been made to the workman for working as substitute of some peon who proceeded on leave, as daily wager and sometime for filling water on the same wages i.e. Rs. 60 per day. It is also evident that the workman used to bring cheque from other banks. Thus, the statement of the workman finds support from the documentary evidence produced by him.

23. The contention of the learned representative on behalf of the management that workman was private servant of Sh. Satya Prakash, Generator owner seems to be devoid of any force. The documents produced by the management Ex. A2/22 is an undated statement said to be given by the generator owner Sh. Satya Prakash which seems to have been procured by the management to create evidence in support of its contention that workman was an employee of the said generator owner. There is inconsistency in the statement of Sh. Satya Prakash and contents of the documents. As per statement of Sh. Satya Prakash, the generator was installed in the bank's branch in the year 1990 and he himself use to operate the same

subsequently, he employed a boy for the same and later on the workman used to operate his generator whereas in the written statement in the nature of certificate Ex. A2/22, it has been stated that since installation of generator in the year 1990, he was paying to the workman amount mentioned in his statement. In his statement he claimed said document to be in his own writing but later changed his version and stated that he is not literate. He was unable to answer the question who had written the statement Ex. A2/22. He has also admitted in his cross-examination that he has no proof regarding any payment made to the workman for operating his generator. Furthermore, the period of the payment made to the workman through debit slips as daily wage by the bank and the period mentioned in document A2/22 during which payment said to be made to the workman by Sh. Satya Prakash is same which also corroborated the statement of the workman that he was not a servant of the generator owner. Therefore, in above facts and circumstances the contention of the learned representative on behalf of the management that the workman was a private servant of the generator owner, is not tenable.

24. In view of the above discussion it is proved from the oral and documentary evidence of the workman that workman had worked more than 240 days as daily wage in the bank preceeding 12 months from the date of alleged termination i.e. 5-10-2002.

25. Admittedly, in the instant case the management has not given any notice or compensation as required under section 25F of the I. D. Act. In the case laws cited by the workman well settled legal principles that in the case of a daily wage, if, he had worked for 240 days in a calendar year, his services cannot be dispensed with without following procedure under section 25F of the I.D. Act, have been reiterated.

26. In 1997(76) FLR page 237 submitted by the management side Hon'ble Apex Court has observed that if a daily wage is terminated he has no right to the post. In 2008 (119) FLR 876 Hon'ble Apex Court has hold that termination of services of daily wage does not amount retrenchment and in such circumstances the employee can not be given benefit of reinstatement with continuity and back wages. In such circumstances employee is entitled to benefit of compensation only. In 2006(110) FLR 773 Hon'ble Apex Court has hold that if initial appointment itself is void, provision of section 25F are not applicable. In 2006(109) FLR 156 Hon'ble Apex Court has observed that relief of full back wages may not be granted automatically.

27. In 2008(119) FLR 877 Depak Ganpat Tari V N.E. Theater Pvt. Ltd. Hon'ble Bombay High Court relying on the Hon'ble Apex Court's judgment in 2008(117) FLR 1086 (SC) AP V. Brahmandandam 2008 (118) FLR 376 (SC) Telephone DM vs. Keshab Deb 2006 (111) FLR 1178 (SC)

JDA V. Ram Sahai, while awarding compensation of Rs. 15000/- to the concerned workman considering his daily wages as Rs. 45 & in view of the fact that the workman had put in about 3 years of service, has observed as under :

"It is apparent that termination of services of a daily wages does not amount to retrenchment and for violation of Section 25-F in such circumstances, the employee cannot be given benefit of reinstatement with continuity and back wages. Hon. Apex Court has hold that in such circumstances employee is entitled to benefit of compensation only."

28. In the light of principle laid down in aforementioned case laws the ends of justice would meet by paying compensation to the workman instead and in place of relief of reinstatement in service. Having regards to these facts that the workman had worked as casual labour and he was getting Rs. 60 per day at the time of alleged termination and keeping in view the entire facts of the case, the interest of justice would subserved, if, management, is directed to pay lump sum amount of compensation only. Accordingly the management is directed to pay a sum of Rs. 12,000 (Twelve Thousand only) to the workman as compensation for termination of his services in violation of section 25F of the I.D. Act. The said amount shall be paid to the workman within 8 weeks of publication of the award failing which the same shall carry interest @ 8% per annum.

29. The reference is answered accordingly.

30. Award as above.

Lucknow.

N. K. PUROHIT, Presiding Officer

नई दिल्ली, 27 अप्रैल, 2009

का. आ. 1361.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक आफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कोलकाता के पंचाट (संदर्भ संख्या 12/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-4-2009 को प्राप्त हुआ था।

[सं. एल-12011/247/2003-आईआर(बी-11)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th April, 2009

S. O. 1361.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 12/2004) of the Central Government Industrial Tribunal Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank

of India and their workman, which was received by the Central Government on 24-4-2009.

[No. L-12011/247/2003-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
AT KOLKATA**

Reference No. 12 of 2004

Parties : Employers in relation to the management of
Central Bank of India

And their workmen.

Present : Mr. Justice C.P. Mishra Presiding Officer

On behalf of the
Management

Mr. S.K. Tarai Manager.

On behalf of the
Workmen

Mr. M. Bhunia with Mr. S.P.
Bhattacharya, Executive
Committee Member and
Regional Secretary of the
Union respectively.

State: West Bengal.

Industry : Banking.

Dated: 23rd March, 2009.

AWARD

By Order No. L- 12011/247/2003 /IR (B-II) dated 11-03-2004 the Government of India, Ministry of Labour in exercise of its powers under Section 10 (1) (d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of Central Bank of India in terminating the services of Shri Gobinda Panigrahi without observing Section 25 (F) of the ID Act is legal and justified? If not, what relief the workmen is entitled to?”

2. This reference has been made at the instance of Central Bank of India Employees' Union, hereinafter to be referred as the Union. The case of the workman as it appears from the written statement filed by the union, in short is that Shri Gobinda Chandra Panigrahi the concerned workman rendered services of a full-time Peon as a casual labour at Regent Park Sarani Branch under Kolkata Regional Office (South) of the Central Bank of India, hereinafter referred as the Bank. He was engaged in the Bank's services as a temporary employee on casual basis for smooth functioning of the Branch for 274 days in a calendar year from 16-12-1989 to 24-11-1990 and again for 276 days in a calendar year from 01-12-1990 to 28-11-1991, excluding Sundays and Holidays. He used to be paid @ Rs. 12 per day. His service however, were terminated on 06-01-1992 without assigning any reason and without any notice or compensation. It stated that the concerned workman registered his name with the Employment Exchange and he possesses eligibility criteria for employment in the subordinate cadre of the Bank. He applied to the Regional Office (South), Kolkata for his absorption in the Bank, but the Bank rejected his prayer.

The union on behalf of the concerned workman made it clear that it is claiming his absorption in the service of the Bank in Terms of the Circular of the Bank bearing No. CO:90:91:922 dated 12-03-1991 which was issued by the Bank in this regard. At the request of the concerned workman the union espoused his cause and raised an industrial dispute before the Assistant Labour Commissioner (Central), Kolkata and conciliation proceedings were held which ended in failure and ultimately the dispute has been referred by the Central Government to this Tribunal for adjudication. It is also stated that since the concerned workman had worked for more than 240 days in two consecutive years in 1989-90 and 1990-91 the Bank cannot escape the responsibility of complying with the requirements as provided under Section 25F of the Industrial Disputes Act 1947, hereinafter to be referred as the Act. But in this case the Bank terminated the services of the workman by way of retrenchment without complying with the conditions laid down in Section 25F of the Act, viz., notice or pay in lieu thereof and retrenchment compensation and such termination is, accordingly, illegal and unjustified. It is prayed that the Bank be directed to reinstate the concerned workman in service with all his back wages from the date of his illegal termination and also absorb him in terms of the Bank's circulars.

3. The Bank in its written statement has challenged the maintainability of the reference and also jurisdiction of the Tribunal to adjudicate the same. It is stated that the reference presupposes the existence of an industrial dispute between the “employer - employee” but the non-existence of such relationship between the parties involved cannot make it an ‘industrial dispute’ as defined in Section 2(k) of the Act and therefore, the reference is not maintainable. It is, however, stated that the concerned workman was engaged at Regent Park Branch of the Bank as a Coolie intermittently to bring water from outside the Bank as and when required and it does not come under the definition of an ‘industrial dispute’. It is also stated that the reference is vague as it does not mention the date of termination of the workman and the same is not maintainable.

Regarding merits it is the case of the Bank that the concerned workman was engaged by the Bank at its Regent Park Branch for carrying water from outside as and when required and was paid @ Rs. 12 per day for the same. He was never engaged to perform any duty of a Peon or for full working hours excepting carrying water for the period 16-12-1989 to 24-11-1990 and 01-02-1990 to 28-11-1991 and his engagement was purely on job basis and the same cannot be termed as ‘casual’. He used to be paid through P/C voucher on account of P/C Misc. Charges and petty cash voucher. As per procedure laid down in various circulars/orders the Bank had to recruit a regular sub-staff through local Employment Exchange against any vacancy either in temporary or permanent post and after following certain guidelines, but the concerned workman

was engaged by the Branch of the Bank as and when required and not on regular basis for carrying water from outside during the aforesaid period. According to the Bank since the concerned workman was not engaged against a regular vacancy and he was engaged for a particular job and for a particular work on a consolidated payment intermittently and payments were made on daily work done basis, his case is not a case of termination from service, but it is a case of disengagement and he cannot claim any benefit for such disengagement. It is also stated that the concerned workman does not come within the purview of 'workman' as defined in Section 2(5) of the Act by virtue of his nature of work in the Bank. The Bank also has denied the claims and contentions of the workman in seriatim. It is accordingly claimed that the workman is not entitled to any relief in this case.

4. A detailed rejoinder is also filed on behalf of the workman denying the claims and contentions of the Bank as made in its written statement in seriatim and also reiterating claims and contentions of the workman as already made in the written statement of the union. It is stated that the statements of the Bank is misleading, misconceived, untrue, unjust and improper.

5. Both the parties have examined two witnesses each in support of their respective case. WW-1, Gobinda Panigrahi the concerned workman has stated in his evidence that he was working at Regent Park Branch of the Bank as a casual sub-staff from 16-12-1989 and his services were terminated on 06-01-1992. He had worked continuously in two stretches viz. 16-12-1989 to 24-11-1990 and 01-12-1990 to 28-11-1991 for 274 and 276 days respectively. He has mentioned the names of the two Managers of the Bank under who he used to work there. He has narrated the duties which he used to perform there. He was getting Rs.12 per day on weekly basis through vouchers. He has stated that one Shri P.C. Sinha, Chief Manager (PRS) of the Calcutta Zonal Office sent a letter to the Bombay Office, Ext. W-2 stating that the concerned workman had worked in the Branch as a member of the sub-staff. He has also stated about his application to the Regional Office, Ext. W-3 for regularization in service which was turned down by the Bank. He has further stated that he read upto Class-VIII and his name was registered in the Salimpur Employment Exchange. He applied to the Bank for regularization of his services on the basis of the circular of the Bank, Ext. W-5. According to him the Bank has produced only 13 vouchers and has not produced other vouchers lying in its custody. He accordingly has prayed for his reinstatement in service with full back wages from the date of termination of his service. In cross-examination the witness has stated that he had acquaintance with the Manager of the Bank as he was his neighbor who asked him to work in the Bank as a member of casual sub-staff. He, however, could not say whether the Manager of Regent Park Branch has any power to

appoint a workman. He also could not say about the procedure for appointment of sub-staff or how the members of the sub-staff are paid their salary in the Bank.

WW-2, Ramen Roy the General Secretary of the union is the other witness on behalf of the workman. He has stated in his evidence that the concerned workman was a casual workman and he had been working at Regent Park Branch of the Bank in the capacity of a Peon during the period 1989-90 and 1990-91. The workman made representation to the Bank for his regularization in service as per various circulars and instructions which was declined by the Bank. He then sought for assistance of the union and the present dispute was raised. Service of the workman was terminated in total violation of the provisions of the Act as he was neither served with any notice nor was given any compensation. He has exhibited certain documents relating to the conciliation proceedings in the matter. He has also referred to the circular of the Bank dated 12-03-1991 and stated by this the Bank was to consider absorption of those casual workers who have completed 240 days' temporary service in any continuous period of 12 months after 01-01-1982 and prior to 31-12-1990 in the immediate available vacancies without any test and interview. According to him there is no post of Waterboy in the Bank and it is part of the duty of the subordinate staff or Peon for doing other duties. In cross-examination the witness has stated that he was working as a Clerk at Rabindra Sarani Branch of the Bank when the concerned workman started working at Regent Park Branch of the Bank. The workman was appointed as a member of the subordinate staff by the Branch Manager who has power to engage a subordinate staff on casual basis. No appointment letter, however, was issued in his favour and he was paid on daily basis. He has stated that the concerned workman did not come within the purview of any settlement but was covered by the Awards. He has admitted that the concerned workman was not a member of the union. It is further stated by him that the concerned workman was a temporary/casual workman of the Bank and he was not a member of the permanent staff and he was working as a casual worker all along. Casual workmen did not get wages for the holidays although they are entitled for the same. According to him the concerned workman was entitled to get bonus, but he was not paid bonus.

6. Management, on the other hand examined MW-1, Dilip Chowdhury who was posted at Regent Park Branch of the Bank from July, 1989 to July, 1997 as Sub Accountant. He has narrated the duties of the sub-staff of the Bank. He has stated that the sub-staffs are required to sign attendance register and Head Peon supervises their work. Payment of salary to the sub-staff is made as per salary register. It is his evidence that he does not know any sub-staff by the name Gobinda Panigrahi the concerned workman who, however, was working in the canteen and his work cannot be compared with the work

of the sub-staff of the Bank. The procedure of appointment of the concerned workman and that of the regular sub-staff of the Bank are not the same. He has stated that a daily rated worker cannot be treated as temporary or casual staff and such worker does not get salary for Sundays and holidays. The service condition or Award or settlement is not applicable to the daily rated worker. According to him the demand of the concerned workman is not reasonable. In cross-examination the witness has stated that he retired from service of the Bank in February 2006. He has admitted in Ext. W-2 the name of the concerned workman is mentioned at Serial No. 3 showing him to have worked as a sub-staff in the year 1989 and 1990 and as per column D of it he is said to have completed 240 days work in a period of 12 calendar months. He has however stated that it is his personal experience that the concerned workman was bringing water from outside and he was working in the canteen. He has no knowledge about the conciliation proceedings held in the matter or whether the Bank took the stand before the conciliation officer that the concerned workman was a casual worker and he completed 240 days of work. According to him Sastri Award or Desai Award is binding on the Bank and also on the employees of the Bank.

MW-2, Asim Kumar Nandi is the other witness for the Bank who is posted at Zonal Office of the Bank at Kolkata as a Manager GAD. When he was posted in Calcutta South Regional Office as Manager, PRS he came to know about the concerned workman through a notice of ALC (C), Kolkata. According to him the concerned workman was attached to the Regent Park Branch of the Bank, but no work was allotted to him at that Branch. He was simply asked to bring water from outside office premises against payment of Rs. 12 per day, but no appointment letter was issued to him. He was supplying drinking water at Regent Park Branch of the Bank during 1989-90 and 1990-91 and as such he supplied drinking water for more than 240 days in a year. Neither Bank's service conditions, nor settlement or award meant for the Bank apply to him. According to him there is no question of giving any letter of termination to the workman. In cross examination he has stated that he was present in the conciliation proceedings held on 7-12-2001 and the minutes of conciliation proceedings Ext. W-7 was signed by him. He also explained that in this document a reference to casual worker to the concerned workman has been made in general sense. He has stated that as per Bank's circular a person who has worked continuously for more than 240 days is to be absorbed. He has admitted that the Bank is required to issue appointment letter to a casual/temporary employee as approved by the Regional Office of the Bank in terms of Desai Award and Sastri Award and if appointment letter is issued then termination letter is also required to be issued. He, however, has stated that the concerned workman was simply selling water to the Bank for which no appointment letter or order of the Bank was

required and as the Bank simply asked him to stop supply of water, question of issuance of any order did not arise. He has admitted his signature in Ext. W-7/3 and the particulars given therein. He has also admitted that absorption in Bank's service is based on Bank's circular of 1989 and other circulars in the matter. He has also stated that the Regional Manager is the author of Ext. W-9 and the handwritten insertions are in the handwriting of the witness himself. He, however, has denied that such insertions were made in it without confirmation of the Regional Manager.

7. Both the parties have also exhibited certain documents. Out of the documents exhibited on behalf of the workmen, Ext. W-1 is the Payment Register in respect of the concerned workman. Ext. W-2 is a letter dated 1st January, 2002 from the Chief Manager (PRS) to the Central Office, PRS Dept. of the Bank supplying certain information in respect of some persons including the concerned workman. Ext. W-3 is the letter of the concerned workman dated 20-6-2000 addressed to the Regional Manager, Regional Office (South), Kolkata of the Bank representing his case for regularization of his service in the Bank. Ext. W-4 is a letter dated 20-7-2000 of the Senior Manager, Regent Park Branch of the Bank in reply to Ext. W-3. Ext. W-5 is the central office circular dated 12-3-1991 of the Bank regarding absorption of temporary employees. Ext. W-6 is the letter of the union dated 24-8-2000 raising the industrial dispute in respect of the concerned workman before the ALC (C), Kolkata. Exts. W-7 to W-7/4 and Ext. W-14 are the minutes of the conciliation proceedings held on different dates. Ext. W-8 is a letter dated 26/27-3-2002 from the Senior Manager (PRS), Central Office of the Bank to the Zonal Office, Kolkata regarding utilization of Part-time Safai Karmacharies as full-time sub-staff and payment thereof. Exts. W-9 to W-12 are the correspondences of the Conciliation Officer in respect of the industrial dispute concerning the concerned workman. Ext. W-13 is a Central Gram dated 27-1-1995 issued by the Coochbehar Regional Office of the Bank.

The Bank, on the other hand, also exhibited following documents. Ext. M-1 is a letter dated 30-4-2001 written by the Senior Manager of Regent Park Branch of the Bank to the Regional Office, Calcutta (South) enclosing copies of certain P/L Vouchers through which the concerned workman was paid. Ext. M-2 are five payment vouchers. Ext. M-3 is a letter dated 19-10-2000 written by the Senior Manager, Regent Park Branch of the Bank to the Regional Office, Kolkata (South) along with its enclosures regarding the case of the concerned workman before the ALC (C), Kolkata. Ext. M-4 is the letter dated 11-9-2000 of the ALC (C), Kolkata to the Regional Manager, Regional Office (South), Kolkata asking for comments regarding the representation made on behalf of the concerned workman in the matter. Ext. M-5 is the same document as Ext. W-3. Ext. M-6 is the also the same document as Ext. W-6. Ext. M-7 is a letter dated 22-12-2000

by the Senior Manager, Regent Park Branch of the Bank to the ALC (C), Kolkata in reply to Ext. M-4. Ext. M-8 is a letter dated 26-2-2001 written by the union to the ALC (C), Kolkata in reply to Ext. M-7. Ext. M-9 is again the same document Ext. W-7/3. Ext. M-10 is a letter dated 17-4-2003 of the Regional Manager addressed to the Zonal Office, PRS., Kolkata of the Bank over the industrial dispute raised by four persons including the concerned workman. Ext. M-11 is the again the same document; Ext. W-9. Ext. M-12 is the letter dated 21-10-2002 written by the Chief Manager (Law) to the Chief Manager (PRS), Zonal Office, Kolkata of the Bank regarding the industrial dispute raised by the aforesaid four persons including the concerned workman. Ext. M-13 is a letter dated 16-10-2002 written by the Chief Manager (R & P) to the Chief Officer (Law), Central Office of the Bank over the industrial dispute as stated above. Ext. M-14 a letter dated 2-5-2001 written by the Manager— - OPR, Regent Park Branch to the Regional Office — PRS, Kolkata South regarding the representation made by the concerned workman.

9. On the perusal of the aforesaid facts and evidence led on the either side it is evident that the claim of the concerned workmen is for regularizing his services for the post of Peon/Subordinate Staff in the Bank. According to him he has already worked for more than 240 days in a year viz. 274 days from 16-12-1989 to 24-11-1990 and 276 days from 1-12-1990 to 28-11-1991 as a casual worker for doing the job of a full-time Peon of the Bank. It is also stated that he is entitled to get permanent recruitment in the Bank as he had so fulfilled the required qualifications prescribed by the Bank in this connection. Management, however, has challenged it by saying that the concerned workman, in fact, had only been working in the canteen who was so employed by the canteen committee having got a different identity and status of itself and the concerned workman was only carrying water from outside as it was so required and he was paid through petty cash vouchers from time to time in this regard. It is stated that for recruitment of sub-staff a procedure is laid down in the various circulars/ orders/agreements of the Bank and such recruitment only so takes place through a local Employment Exchange against any vacancy which may be there either of temporary or permanent nature only after following the necessary guidelines so applicable for that purpose and the workman had never been so appointed by the Bank after following the said prescribed procedure in this regard so that there is any question of absorption or regularization of his services in the Bank or that the provisions of Section 25F of the Act could have any such application to the concerned workman who is not so entitled to get any relief in his favour as it has been so claimed by him.

10. The workman on the contrary in support of his claim and contentions has place reliance upon the various documents and circulars of the Bank in order to show that he is so entitled to be so absorbed in the Bank as Peon/

Subordinate Staff on the basis of the period of work so done by him in this connection. Apart from that by his oral evidence as WW-1 he has also stated that he had done the work in the Bank from 16-12-1989 to 24-11-1990, i.e., for a period of 274 days and even further to that from 01-12-1990 to 28-11-1991, i.e., for 272 days and for this he had been so paid his wages accordingly. It is also stated that the Chief Manager (PRS) of the Bank himself through a letter dated 1st January, 2002, Ext. W-2 had also so shown therein that the concerned workman as a sub-staff had so worked for 240 days in the years 1989 and 1990 at Regent Park Branch of the Bank. The circular, Ext W-5 as it was also so issued by the Central Office of the Bank was there for absorption of such workmen who had worked for 240 days continuously in a period of 12 months in favour of the workman in this regard. It is also found on the record that there is no denial of the said period of work as so claimed by the concerned workman to have done by him by the management in this regard except saying that he had done the aforesaid work after he was so appointed by the canteen committee and so he is not an employee of the Bank on that basis. The statement as it was so given by the two witnesses who have been so examined on behalf of the management MW-1, Dilip Chowdhury and MW-2, Ashim Kumar Nandi for this have only pleaded their own ignorance about the contents of the document, Ext. W-7 the conciliation proceedings that took place before the parties on 07-12-2001 about the concerned workman for his absorption in the Bank which was being so claimed by the workman in this regard.

11. Considering all these facts on the record and the evidence as led by either side, it is evident that the workman has made his claim on the basis of own circular of the Bank dated 12th March, 1991, Ext. W-5 that provides the conditions for absorption of the temporary employees working in the Bank during the relevant period mentioned therein for this purpose. This circular goes to show that those temporary employees who had been so working and put in 240 days of temporary service in any continuous period of 12 months after 01-01-1982 upto 31st December, 1990 in the Bank were to be considered for their absorption in the immediate available vacancy with the Bank without any test and interview. It also provided that qualification and age norms etc. was not be insisted in their case and they were to be so considered for their appointment first before initiating any recruitment process for making any such further appointment in the Bank for any such vacancy so available to be there in this regard. It is also evident that paragraphs 4 and 5 of this circular relate to the case of those employees who had so worked for the period 1987 to 24th December, 1990 which thus so cover the period of the concerned workman as well since admittedly he had so worked in the Bank as sub staff and therefore he deserves to be so absorbed in the Bank as per this circular issued in this connection. In this connection Ext. W-2 as so filed by the workman also go to show that the

information was given to the Central Office by the Regional Office about the concerned workman and other such temporary workers who had so worked therein as this information had been so sought by the Central Office for their absorption in the Bank as per this circular. The name of the concerned workmen was clearly so mentioned therein along with others by showing that he had worked in the Bank as sub-staff for the period of 1988 - 1989 and his case was fit for absorption in this regard. Ext. W-1 the Payment Register of the Bank also goes to support the claim of the workman about the period of work so done by him in the Bank.

12. It has been also argued on behalf of the workmen in this connection that on similar facts and allegations one other workman viz. Shri Dilip Kumar Ghosh like him had so done the work in the Bank for 240 days or so during the said period 1988 - 1992 and who had also so filed his claim before this Tribunal vide Reference No. 3 of 1995 and it was decided in his favour relying upon the same circular of the Bank vide Ext. W-5 which had been also so filed in that case by the concerned workman for this purpose. In that case too, the termination of services of the concerned workman was held to be illegal and void for non-compliance of provisions of Section 25F of the Act and he was deemed to be in continued service by the Tribunal who also directed the management to reinstate him in service as casual worker and also pay him all his back wages found to be so due to him in this regard.

13. Considering the above facts and circumstances, it is evident that in this case too no notice or compensation was at all given to the concerned workman and therefore it clearly so amounts to retrenchment of his services as per the provisions of Section 2(00) of the Act and the provisions of Chapter - VA provided in respect of retrenchment of such workman which is so applicable in the case of the workman as he in this case too had admittedly so put his services for a period that was more than 240 days in a year preceding the date of his termination, i.e., 28-11-1991. As per provisions of Section 25F of the Act one month's notice and retrenchment compensation is a must that was required to be given before any such order of termination of services was to be so passed against the workman and admittedly it has not been done so by the management in this case. The Hon'ble Apex Court in the case of State Bank of India v. N. Sundaramony, AIR 1976 SC 1111; Robert LD' Souza v. Executive Engineer, Southern Railway, 1982-1-LLJ-330; Delhi Cloth & General Mills v. Shambhu Nath Mukherjee, AIR 1978 SC 8 and Mohan Lal v. Bharat Electronics Ltd., 1981 lab. i.e. 806(SC) clearly held that Section 2(00) is so clear and unambiguous that no external aid is necessary for its proper construction. The well-settled position in law is that if termination of service of a workman is brought about for any reason whatsoever, it should be retrenchment except if the case falls within any of the excepted categories i.e. (i) termination by way of

punishment inflicted pursuant to disciplinary action; (ii) Voluntary retirement of the workman; (iii) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; and (iv) Termination of the service on the ground of continued ill-health. Once the case does not fall in any of the excepted categories, the termination of service even if it be automatic discharge from service under agreement would nonetheless be termed retrenchment within the meaning of the expression of Section 2(00) of the Act. It must as a corollary follow that if the name of the workman is struck off the roll that itself would constitute retrenchment as for this it was so observed by the Hon'ble Apex Court specifically in the case of Delhi Cloth and General Mill's case (supra). Admittedly, in this case any such disciplinary proceedings was not so drawn against the workman and also that there was no such voluntary retirement sought by him or refusal made by the workman so as to attract the provisions of any such exception given to the Section 2(00) of the Act as referred to above for making any such order of termination of his services as it has been done by the management in this case and as such it is clearly illegal, void and inoperative since it was so done without compliance of the provisions of Section 25F of the Act.

14. In view of the aforesaid facts it is evident that the workman, in this case is found to have so proved his case through his oral evidence and also by the documents filed by him i.e. Exts. W-1, W-2, and W-7 and so can very well get a benefit available to him under the Bank's circular, Ext. W-5 which was also applicable in his case too. Since it is found that the services of the concerned workman has already been terminated by the Bank and so the question of his absorption does not arise in the present set of facts and circumstances at this stage. However the Bank may consider it after he so joins the Bank as a casual workman in this regard.

15. In view of the above facts and circumstances it is found that services of the concerned workman had been terminated without making any compliance of provisions of Section 25F of the Act and it is clearly found to be illegal and void and he shall be deemed to have been continuing in service as before. The management of the Bank is accordingly directed to reinstate him in service as casual worker from the date of termination of his services and also pay him half of the back wages which may be so found to be due to him accordingly. The management, however, may also consider the claim of the workman for regularization etc. in service of the Bank in light of the circular that had been so issued by it vide Ext. W-5 after he so joins therein the Bank as casual workman in terms of this order accordingly.

The reference is answered accordingly

C. P. MISHRA, Presiding Officer

Dated, Kolkata.

The 23rd March, 2009

नई दिल्ली, 27 अप्रैल, 2009

का. आ. 1362.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक आफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कोलकाता के पंचाट (संदर्भ संख्या 43/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-4-2009 को प्राप्त हुआ था।

[सं. एल-12011/211/2003-आईआर(बी-11)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th April, 2009

S. O. 1362.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 43/2004) of the Central Government Industrial Tribunal, Kolkata, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 24-4-2009.

[No. L-12011/211/2003-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 43/2004

Parties : Employres in reletion to the management of Central Bank of India

and

Their workmen

Present : Mr. Justice C.P. Mishra, Prisiding Officer

APPEARANCE:

On behalf of the : Mr. S.K. Tarai, Manager.
Management

On behalf of the : Mr. A. Banerjee, Office
Workmen Secretary of the Union.

State : West Bangal : Industry : Banking

Dated : 24th March, 2009

AWARD

1. By order No. L-12011/211/2003-IR(B-II) dated 5-11-2004 the Government of India, Ministry of Labour in exercise of its powers under Section 10(i)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of Central Bank of India in terminating the service of Sh. Subhasis Batabyal is justified ? If not, what relief the concerned workman entitled to ?”

2. This reference has been made at the instance of Central Bank of India Employees' Association (West Bengal & Sikkim), hereinafter to be referred as the Union. The case of the Union is that the Central Bank of India, hereinafter to be referred as the Bank appointed and /or engaged Shri Subhasis Batabyal the concerned workman on 22-4-1992 to work in the permanent vacancy of sub-staff at its Nuisarai Branch under Kolkota North Region of Kolkota Zone and terminated his service in March, 1997. He had served the Bank for 250 days from April, 1992 to March, 1993 continuously and uninterruptedly to the full satisfaction of his seniors and the Bank. In this connection two letters dated 11-11-1994 and 26-12-1994 of Nuisarai Branch to Regional Office North, Kolkata and also the internal correspondences between Chief Manager (PRs) and Central Office, Mumbai have been referred by the Union. The Bank had terminated and/or retrenched the concerned workman unlawfully without complying with the conditions prescribed in Section 25F of the Industrial Disputes Act, 1947. The concerned workman and the union protested such action of the management and requested the Bank to reinstate him in service but failed to get justice. The union thereafter raised and industrial dispute before the Assistant Labour Commissioner (C), Kolkata and conciliation proceedings were held but due to uncompromising attitude of the management it ended in failure and ultimately the present reference has been made to this Tribunal for adjudication of the dispute under reference. According to the union the action of the management in terminating the service of the concerned workman was unlawful and unjustified as they did not comply with the conditions precedent to retrenchment as laid down in Section 25 F of the Act. Such termination of service of the workman is claimed to be void and inoperative. It is accordingly prayed that an Award be passed declaring the termination of service of the concerned workman by the Bank as *void ab initio*, improper, unjustified and unlawful and also directing the Bank to reinstate him service with full back wages with consequential benefits from the date of his termination.

3. The Bank in its written statements raised certain points regarding maintainability of the reference. It is stated that there was no employer - employee relationship between the Bank and the concerned workman and therefore the present dispute does not come within the purview of the 'Industrial Dispute' as defined in Section 2(k) of the Industrial Disputes Act, 1947, hereinafter to be referred as the Act. As such it is claimed that the reference cannot be adjudicated by this Tribunal. It is also stated that the reference does not mention the date of termination of service of the workman and as such the reference is vague. It is further stated that the concerned workman was engaged by the Bank at its Nui Sarai Branch intermittently to carry out casual and extra works as and when required on a consolidated amount of Rs. 20 per day on no-work no-pay basis and as such does not come under the definition of the 'Industrial Dispute'. Regarding facts the Bank has

denied the claims and contentions of the workman in seriatim. It is the case of the Bank that the concerned workman had worked intermittently on casual basis for few days during April, 1992 to March, 1993, but he was never engaged against any permanent vacancy of regular sub-staff nor he had completed 240 days of service in a calendar year during that period and as such there was no violation of any provision of the Act. The nationalized Banks appoint their sub-staff through local Employment Exchange and such appointment is made only against vacancy to a post, but he was never engaged through any Employment Exchange nor against any post. According to the Bank mere completion of 240 days work in any organization does not create a right of regularization under the Act. It is further stated that the concerned workman was not engaged by following the prescribed procedures for appointment of a sub-staff in the Bank. The Branch Manager/Officer of a Branch has no authority or power to appoint a sub-staff locally against any permanent vacancy or post and as such Section 25F of the Act has no application in his case. The case of the concerned workman is not a case of termination but it is a case of de-engagement and as such he cannot claim any benefit under the Act. The concerned workman also does not come within the purview of 'workman' as defined under Section 2(s) of the Act because of his nature of work. Therefore, it is claimed that the workman is not entitled to any relief in this reference.

4. A rejoinder is also filed on behalf of the workman denying the claim and contentions of the Bank and also reiterating its own case as already narrated in the statement of claims of the workman.

5. WW-1. Subhasis Batabyal the concerned workman is the sole witness for the workman. He has stated in his evidence that he worked in the Bank at its Nuisarai Branch in the district of Hooghly as a Peon for 304 days. He started work on 2-3-1992 and worked till 8-5-1993 and on 9-5-1993 when he went to the Bank he was told that he was not required to do any further work in the Bank. The Bank used to allot work to him every day. He used to serve ledgers in the different departments and he also used to go administrative offices of the Bank. He was working there under the supervision of the Branch Manager. He used to get Rs. 10, Rs. 20 and at times Rs. 70 or Rs. 80 per day through vouchers signed by the Manager of the Bank. In cross-examination the witness has stated that he was never allowed to sign in the attendance register and the Manager used to keep record of his attendance. The Branch Manager told him to perform work of casual Peon in the Bank, but no letter of appointment was given to him. For doing the job he used to get Rs. 10 or Rs. 20 or Rs. 50. The Manager used to make weekly payments to him.

6. On the other hand, two witnesses have been examined on behalf of the management. MW-1, Biswanath Dey is a Clerk at Nui Sarai Branch of the Bank and during the relevant period he was also a Clerk there. He has stated

that the concerned workman was entrusted to deliver some letters given by the Branch Manager to Kolkata Head Office and other Branches of the Bank. The work whatsoever so done by him was supervised by the Branch Manager. He was an outsider and he never got any job, either part-time or full-time in the Bank. Name of the then Branch Manager was Sufal Chandra Dalui who has been dismissed from the service of the Bank. It is the evidence of this witness that no Branch Manager or any officer of any Branch has any power to appoint any person in the Bank. Since there was no courier service he was asked to deliver the letters by the Branch Manager. Regarding Ext. W-2 his evidence is that it is signed by Shri Sufal Chandra Dalui the then Branch Manager, but it neither bears any seal nor the name of the signatory. The name of the Branch is also missing there. He has also stated that there was no typewriter in the Bank. In cross-examination the witness has stated that he cannot tell for how many days the concerned workman had worked at Nui Sarai Branch during April, 1992 to March, 1993. It is also not within his knowledge that the workman had worked for 240 days during that period or not. He does not know Ext. W-2, but admitted that it is a correspondence of the Bank. He however, could not say whether Ext. W-2 is genuine document or not and also whether it was official or not.

MW-2, Santanu Kumar Roy is the other witness of the management who at present works to Nui Sarai Branch of the Bank as a Daftary and during the relevant period he was working there as a regular sub-staff. It is his evidence that the concerned workman used to fill up the pay-in-slips of the customers, bring drinking water and in cases of necessity he also used to deliver urgent letters to the Regional Office. The concerned workman used to receive payments on signing the debit voucher. He, however, does not know whether any appointment letter was issued to him or not. In cross-examination he has does not know how the attendance of Shri Batabyal used to be recorded. He has also stated that he was the only sub-staff in Nui Sarai Branch of the Bank at the relevant time.

7. Both the parties have exhibited certain documents. Out of the documents exhibited on behalf of the workman Ext. W-1 is a letter of the Branch Manager, Nui Sarai Branch of the Bank addressed to the Regional Office (North) furnishing the particulars of the concerned workman. Ext. W-2 is also a similar letter Ext. W-3 is a letter written by the Chief Manager (PRs) to the Central Office of the Bank regarding information on subordinate staff engaged on casual/temporary basis. Ext. W-4 is also a similar letter exchanged between the same authorities. Ext. W-5 is the letter of the union raising the industrial dispute before the ALC (C), Kolkata and Ext. W-6 is the failure of conciliation report dated 28-8-2003 submitted by the ALC (C), Kolkata.

Out of the documents exhibited by the management Ext. M-1 is a letter dated 6-8-2003 of the Branch Manager, Nui Sarai Branch to the Regional Office regarding the case

of the concerned workman. Ext. M-2 is a letter dated 13-8-2003 of the Assistant Regional Manager to the Regional Office (South) on the same subject. Ext. W-3 is a letter dated 16-1-2004 written by the Chief Manager (PRS) to the Chief Manager (PRS), Zonal Office asking for comments regarding the case of the concerned workman. Ext. W-4 are the vouchers of the Bank. Ext. W-5 is same document Ext. W-6.

8. On the perusal of the facts and evidence led on the either side it is evident that the concerned workman Subhasis Batabyal has challenged the action of the Bank for termination his services in spite of the fact that he had served the Bank for more than 240 days preceding the order of his termination. According to him he had worked for 250 days from April, 1992 to March, 1993 continuously and this was also so acknowledged by the officers of the Bank in this connection by sending letters dated 11-11-1994 and 26-12-1994 to the Regional Office, North Calcutta. The Bank, however, terminated his services unlawfully without complying with the conditions provided in Section 25 F of the Act which is quite illegal, void and inoperative. To support his claim and contention he has given his oral statement as WW-1 wherein he has stated the aforesaid facts for the period of work done by him before termination of his services by the Bank on 9-5-1993 in this regard. The management on the other hand has challenged the aforesaid claim and contentions of the workman by submitting that the workman only had worked on casual basis for few days during the period of April, 1992 to March, 1993, but he had never been so engaged against any permanent vacancy of a regular sub-staff. The Bank appoints its sub-staff through local Employment Exchange and mere completion of 240 days work in any organization does not so create a right of regularization. The concerned workman was never engaged by following any prescribed procedure and also that the Branch Office had no such authority or power to appoint sub-staff locally and as such Section 25F of the Act has got no applicability to the case of the workman since he was disengaged from doing the work which was so entrusted to him on casual basis for sometime by the concerned officer of the Bank and they had no such power however to make any such regular appointment in favour of the workman in this connection. The management also has produced two witnesses MW-1, Biswanath Dey and MW-2, Santanu Kumar Roy and they both stated the facts regarding the nature of work so done by the workman during the aforesaid period of April, 1992 to March, 1993, but they denied any such fact that any regular appointment given to the concerned workman in this regard. As regards Ext. W-2 which had been signed by the then Manager, Sufal Chandra Dalui it is stated by them that he had no such power and authority to make any such appointment of the workman and moreover, he had also been dismissed from the service for number of such lapses done by him MW-2, Santanu Kumar Roy on his part only has admitted that the concerned

workman no doubt did the work for bringing drinking water to the staff and customers of the Bank and other work for taking letters etc. to the Regional Office but no such formal appointment letter was ever issued for that in his favour. He, however, pleaded his ignorance as to how the attendance of the workman was being recorded there in the Branch during the said period shown by the workman. The document Ext. M-1, i.e., the letter dated 06-8-2003 and another letter dated 13-8-2003, Ext. M-2 which is admittedly a correspondence that took place with Regional Office as sent from the Branch Office and this is admitted to both of them in this regard and as the same has been also so filed and relied upon by the workmen viz. Exts. W-3 and W-4 in this connection.

9. Considering the aforesaid facts and evidence led in this case it is evident that the workman admittedly had been so engaged in the Nui Sarai Branch of the Bank and also that he had so worked during the period April, 1992 to March, 1993 continuously and it is clearly so borne out from the own documents of the management as well as by the documents of the workman, i.e., Exts. W3 and W-4 which have not been so challenged to be otherwise by the management as well. By these documents it is evident that information of subordinate staff engaged on casual/temporary basis in the aforesaid branch and the workman who had been so engaged for 240 days or more was furnished as information to the Regional Office and the name of the concerned workman, Subhasis Batabyal is also mentioned therein at Serial No. 6 showing him as a member of sub-staff and also have so worked from April, 1992 to March, 1993, i.e., the period which has been so mentioned in this regard therein by the workman in his statement of claim for this purpose. As such it positively go to show that the concerned workman had done more than 240 days of work in the said branch and therefore his case was also recommended for regularization. However, instead of doing that, his services were discontinued with effect from 9-5-1993 without making any such compliance of the provisions of Section 25F of the Act that clearly provide that no workman employed in any industry who has been in continuous service for not less than one year under any employer shall be retrenched and it directs an employer to make necessary compliance before making any such order of termination by paying compensation or notice thereof as retrenchment compensation is linked with period of past service so done by him as it has been so observed by the Hon'ble Apex Court in AIR 1960 SC 251 (Indian Hume Pipe Co. Ltd v. Workmen) in this connection. The period of 240 days has to be counted from the date of joining even though it was on ad hoc basis and not from the date of regular recruitment. Termination of service not covered within the excepted or excluded categories mentioned in Section 2(oo) of the Act amounts to retrenchment and therefore, non-compliance of Section 25F would vitiate such termination as it was also so held by the Hon'ble Apex Court in 1985 SCC (L&S) 152 (Hari Mohan Rastogi v- Labour Court). The provisions of Section 25F is applicable even to ad hoc

temporary employees also, if they have worked for more than 240 days in a year continuously immediately preceding order of termination of service. It is applicable even to badli workers and even to daily reted workmen as so held in 1987-I-LLJ 85 (Workmen v. Municipal Corporation of Delhi). The Hon'ble Apex Court in the case of State Bank of India V. N. Sundaramony, AIR 1976 SC 1111; Robert L.D'Souza v. Executive Engineer, Southern Railway, 1982-I-LLJ-330; Delhi Cloth & General Mills v. Shambhu Nath Mukherjee, AIR 1978 SC 8 and Mohan Lal v. Bharat Electronic Ltd., 1981 Lab. I.C. 806 (SC) also it has clearly so held that Section 2(oo) is so clear and unambiguous that no external aid is necessary for its proper construction. The well-settled position in law is that if termination of service of a workman is brought about for any reason whatsoever, it should be retrenchment except if the case falls within any of the excepted categories i.e., (i) termination by way of punishment inflicted pursuant to disciplinary action; (ii) Voluntary retirement of the workman; (iii) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf and (iv) Termination of the service on the ground of continued ill-health. Once the case does not fall in any of the excepted categories, the termination of service even if it be automatic discharge from service under agreement would nonetheless be termed retrenchment within the meaning of the expression of Section 2(oo) of the Act. It must as a corollary follow that if the name of the workman is struck off the roll that itself would constitute retrenchment as it was so held specifically in Delhi Cloth and General Mill's case (supra). Admittedly no such disciplinary proceedings were drawn and also it is found that there has been no such voluntary retirement or refusal on the part of the workman so as to attract any such exception referred to above for their termination of their services which as found above is clearly illegal.

Looking at the aforesaid factual and legal position as discussed above it is evident that the termination of service of the concerned workman has not been legally justified as there has been no such compliance of the provisions of Section 25F of the Act though he had worked for more than 240 days prior to the date of termination of his services on 9-5-1993 in this regard. Since there has been no compliance of the said provision by giving any notice or by paying any such compensation which is so required under the law, the action of the management of the Bank in termination services of the concerned workman is held to be clearly illegal and unjustified.

10. All these facts as stated on behalf of the concerned workman and the witnesses examined on behalf of the management together with the documents clearly go to show that the workman had never been appointed as a member like that of a regular sub-staff after following the due procedure of recruitment under the rules. These also

go to show that the workman had admittedly so worked for more than 240 days in a year in the concerned branch as per Exts. W-3 and W-4 which are also not so challenged by the management as well. The nature of appointment of the workman, however, goes to show that he was just a daily rated worker engaged from time to time by the Branch Manager not on any permanent post or vacancy being available in the Bank and for that he was paid a small amount through vouchers in the Bank. for the service as it was so rendered by him from time to time in this regard. It also goes to show that he was not engaged by the Bank after 30th April, 1999. It is an admitted fact to the management as well that no notice was ever given to the workman for such disengagement or retrenchment made by the Bank though the period of more than 240 days work had been so performed by the workman in the Bank, but he was permanently disengaged by the Bank without paying any such amount of compensation as it was so required to be paid to him under Section 25F of the Act in this connection as it clearly so amount to be a retrenchment under the law for this purpose within the provisions of Section 2(oo) of the Act.

11. In view of the facts on record it is clear that the termination of service of the concerned workman was not at all in conformity with the provisions of Section 25F of the Act and so it cannot be said to be legal one. So far as the relief as so claimed by the workman about it for his reinstatement with full back wages etc. it is evident that even if the termination of his services is held to be not legal or justified as per provisions of Section 25F of the Act it is not necessary that in all such cases as a general rule the relief of reinstatement with back wages is obvious but as the Hon'ble Supreme Court in number of cases for this has laid down that a pragmatic view in the matter is to be taken by the Courts and by keeping number of factors in mind viz. that an industry may not be compelled to pay to the workman for the period during which he apparently contributed a little or nothing at all. The Hon'ble Apex Court in Hariyana Roadways v. Rudhan Singh (2005 AIR SCW 4634) has said that the workman who had only worked for a short period, i.e., less than a year or so and having regard to his other basic qualification etc. back wages were also denied to him although the termination of his service was found to have been made in violation of Section 25F of the Act. The Hon'ble Apex Court for this also observed about the various factors and principles to be considered for awarding the back wages or compensation etc., i.e.

"There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment, i.e. whether after proper advertisement of the vacancy or inviting applications from the Employment Exchange,

nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent. In character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back-wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period, i.e., from the date of termination till the date of the award, which our experience shows is often quite large, would be inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

In *Allahabad Jal Sansthan v. Daya Shankar Rai*, (2005) 5 SCC 124:2005 AIR SCW 2646 also after considering the relevant cases on the above such plea, the Hon'ble Apex Court has observed that :

"We have referred to certain decisions of this court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full backwages was the usual result. But now with the passage of time, it has come to be realized that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at."

12. Considering the aforesaid facts and circumstances of the present case it is evident that the workman had only worked for a short period from 17-08-1998 to 30-04-1999 in the Bank as a daily rated worker and his such appointment was not like that of a regular sub-staff according to the established procedure of the Bank. He was asked by the Branch Manager to do the job of a Peon on daily rate basis for which he was also so paid by the Bank through petty cash vouchers. In view of the settled legal position by a recent decision of the Hon'ble Supreme Court in (2006) 4 SCC 1 (Secretary, State of Karnataka & Others *V/s*. Umadevi (3) and Others) any person who has been so appointed not in accordance with the proper procedure or as per recruitment rules, any such benefit of regularization or absorption cannot be extended to him merely by his long period of service in the

establishment since he was not appointed as per procedure applicable to the appointment of its staff. The Hon'ble Apex Court clearly observed for this that:

"43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of an ad hoc employees who by the very nature of their appointment, do not acquire any right."

In view of the above settled legal position as so stated by the Hon'ble Apex Court and looking at the facts of this case, the concerned workman is found not to be entitled to get any such relief for reinstatement or regularization as it has been so claimed by him even if his disengagement is found to be illegal or unjustified being not in accordance with the provisions of Section 25F of the Act, i.e., for want of any notice or for want of any compensation which was so required to be paid to him in this regard.

13. Considering the entire set of facts and circumstances, however, the concerned workman deserves to be given an amount of reasonable compensation for loss of his job in this regard as he was not at all so served with any notice or had been so paid any amount of compensation before he was so disengaged, though admittedly he had so worked for more than 240 days in the Bank in that period as shown in Ext. W-2 in this regard. The Bank should have paid him the necessary amount of compensation as it was so legally required under Section 25F of the Act. The workman accordingly so entitled to get the amount of compensation and looking at the nature

and period of work done by him instead of granting any such relief of reinstatement in his favour or the back wages etc., a lump sum amount of compensation, i.e., Rs. 20,000=(Rupees Twenty thousand) deserves to be awarded to the workman concerned in this regard. The said amount shall, accordingly be paid to the workman by the Bank within a period of one month from the date of this Award becomes so enforceable.

The reference is answered accordingly.

C. P. MISHRA, Presiding Officer

Dated, Kolkata,

The 24th March, 2009.

नई दिल्ली, 27 अप्रैल, 2009

का. आ. 1363.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मार्यन फारवर्डिंग कारपोरेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 2/4/2007, 2/69/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-4-2009 को प्राप्त हुआ था।

[सं. एल-12025/1/2009-आईआर(बी-11)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th April, 2009

S. O. 1363.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/4/2007 in Ref. No. 2/69/2005) of the Central Government Industrial Tribunal No. 2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Maryn Forwarding Corporation and their workmen, which was received by the Central Government on 24-4-2009.

[No. L-12025/1/2009-IR(B-11)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
No. 2, MUMBAI

Present: A. A. Lad, Presiding Officer

Misc/Appln/CGIT-2/4 of 2007

in

(Ref. CGIT-2/69 of 2005)

PARTIES:

M/s. Maryn Forwarding Corporation,
B-B98, Cotton Exchange Building, 2nd floor
Opp Cotton Green Railway Station,
Cotton Green (E)

Mumbai-400 032

:Applicant

V/s.

Shri Jagish Singh Negi,
Salman Singh Chawl, Room No. 29,
G.M. Road, Bhandup (W),
Sion Bandra Link Road,
Mumbai-400 078.

:Opponent

APPEARANCES

For the Applicant : Mr. Sanjay Dhulapkar
Advocate.

For the Opponent : In person.

Mumbai, Dated : 19th January, 2009

JUDGEMENT

Applicant states as under :

1. Applicant is first party of Ref. CGIT-2/69 of 2005 which was engaged in the business of loading and unloading of shipments and transportations of containers.

2. On account of various aspects including shifting of shipment activities to Nhava Sheva Port there was considerable fall in the business of the company as a result of that, company suffered very heavy losses. Company had to stop its activities from April 2005. It is stated that, the situation of company became so bad that Company was not having any liquid cash to make payment toward salary of employees. It is stated that creditors of the company and finance institutions increased their pressure for recovery of their dues on the company. As a result of that, situation gone beyond the control of the company and no option remained with company but to close down its activities w.e.f. 20-12-2005. It is stated that during that period there was no employee working with applicant company and as such, no question arise to terminate services of any of the employee.

3. It is further stated that, in that whole process, company did not receive any notice from this court nor any intimation from other sources. Since there was closure of company, nobody was in the office site of the company.

4. It is stated that one of the Partners of the Company Mr. Yogesh Patel who was earlier residing at 7-B Suvas Apartment, 68-F, Nepean Sea Road, Mumbai said premises was taken over by Bank and sold off in the year 2006 for recovery of his debt. It is stated that Markand Patel Second partner on account of loss of business left the activities of the company and is engaged for religious work. As per the applicant on 15-4-2007, company received letter posted at the address of Partesh Patel son of Markand Patel which was handed over by Markand Patel from which applicant learnt that, an exparte award was passed against the applicant company. It is stated that, since applicant was not aware of the reference pending before this court, did not appear in the reference which resulted in reference

disposing exparte. So it is prayed that decision given in the reference was given without hearing the applicant company. Applicant has good case. If said award is not aside, it will affect on the applicant company. So it is prayed that award passed dated 26-10-2006 be quashed and set aside with direction to restore the Ref. CGIT-2/69 of 2005 and to decide on merits. Besides, both will get an opportunity to lead evidence.

5. This prayer is disputed by the opposite party i.e. workman by filing reply Ex-6 stating that, false case is made out by the applicant company. It is stated that, applicant company purposely remained absent in the reference knowing that, reference was pending here. It is stated that, entire Patel family has got vested interest in the applicant company. They purposely remained absent in the proceeding. Since legal dues of the opposite party were not paid for closing the business. False case is made out only to prolong the proceeding and deprive the workman to get fruits of the award. So it is prayed that, application may be rejected.

6. In view of above pleadings following points arise for determination.

Issues	Findings
(i) Whether applicant proves that it had sufficient reason to stay away from reference?	No
(ii) Is reference required to be restored?	Yes
(iii) What order?	As per order below.

REASONS

Issues 1 & 2

7. By this application, one of the partners of the applicant company states that, he was not aware about this reference pending before this Tribunal. The applicant company has closed down its activities w.e.f. 20-12-2005. At the time of closure, no employee was working with applicant company. Since applicant company has closed down its activities, no body was visiting the place of applicant company. During that period notice of reference was not served on the applicant company and as a result of that, reference was decided exparte. It is disputed by workman saying that, false case is made out by applicant company.

8. Learned advocate for the applicant submits that reference was decided exparte which is matter of record.

9. Record & proceedings reveal that, reference was decided exparte on 26-10-2006. That means there was no pleading of Applicant Company and case of applicant in the reference about demand of the workman. So definitely decision given was a decision given exparte. Applicant

company files this application to restore the reference to consider in the interest of justice.

10. However application is filed after four to five months from the date of the award. Workman is out of job and without any relief. The reason of leaving work place and no knowledge of proceeding has little scope to consider. So in the interest of justice, if I allow this application and restore Ref. CGIT-2/69 of 2005 of file to decide on merits by awarding cost of Rs. 1000 from which I feel, it will meet ends of justice. So by awarding cost of Rs. 1000 on Applicant company, I am restoring Ref. CGIT-2/69 of 2005 to decide on merits. Hence the order :

ORDER

1. Application is allowed on depositing cost of Rs. 1000 to workman.

2. Ref. CGIT-2/69 of 2005 is restored on file to decide on merits.

3. After depositing Rs. 1000 cost to workman, issue notice to workman to attend reference.

A. A. LAD, Presiding Officer

Date : 19-1-2009

नई दिल्ली, 27 अप्रैल, 2009

का. आ. 1364.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 56/02) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-4-2009 को प्राप्त हुआ था।

[सं. एल-12012/363/95-आई आर (बी-II)]

राजेंद्र कुमार, डेस्क अधिकारी

New Delhi, the 27th April, 2009

S. O. 1364.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 56/2002) of the Central Government Industrial Tribunal, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Dena Bank and their workmen, which was received by the Central Government on 24-4-2009.

[No. L-12012/363/95-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI A. N. YADAV, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

(Case No. CGIT/NGP/56/02)

Dated: 27-2-2009

Petitioner/ : Shri Sandeep Nardeorao Kale,
Party No.1 Yaoli, (Shahid), Teh. & Distt.
Amravati, Maharashtra

Versus

New Delhi, the 27th April, 2009

Respondent/ : The Regional Manager,
Party No. 2 : Dena Bank (Regional Office),
Shalimar Building, Shivaji Road,
Nasik

AWARD

(Dated : 27th February, 2009)

1. The Central Government after satisfying the existence of dispute between Shri Sandeep Namdeorao Kale, Yaoli, (Shahid), Teh. & Distt. Amravati, Maharashtra (Party No.1) and the Regional Manager, Dena Bank (Regional Office), Shalimar Building, Shivaji Road, Nasik (Party No. 2) referred the same for adjudication to this Tribunal vide its letter No. L-12012/363/95/IR (B-II) dated 4-3-1997 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of Industrial Disputes Act, 1947 [14 of 1947] with the following schedule.

“Whether the action of the management of Dena Bank in terminating the services of Shri Sandeep Namdeo Rao Kale, Cleaner at Yaoli (Shahid) branch, Amravati w.e.f. 28-7-94 is legal and justified? If not, to what relief the said workman is entitled to and from what date and what other directions are necessary in this regard?”

2. The reference came up for hearing on 4-2-2009. On perusal of Rojnama, it seems that the reference is received initially to the CGIT, Jabalpur in the year 1997. After the transfer to this Tribunal, the notices were issued to both the parties as per the Rojnama dt. 11-7-2002. The management representative is attending the Court and on some occasion the Petitioner and his counsel also attended the Court. Now the Petitioner and his counsel are not attending the Court since last one year. Today also the representative of the management is present and the Petitioner and his counsel absent. The Petitioner has not yet filed an affidavit. No reason for adjorning the reference for the presence of Petitioner only. It appears that he is not interested and hence it is dismissed for the default. Hence this negative award.

Dated : 27-2-2009.

A. N. YADAV, Presiding Officer

नई दिल्ली, 27 अप्रैल, 2009

का. आ. 1365.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मार्यन फार्वर्डिंग कारपोरेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं.-2, मुम्बई के पंचाट (संदर्भ संख्या 2/3/2007, संदर्भ संख्या 2/68/2005 के अर्न्तगत) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-4-2009 को प्राप्त हुआ था।

[सं. एल-12025/1/2009-आई आर(बी-11)]

राजेन्द्र कुमार, डेस्क अधिकारी

S. O. 1365.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/3/2007, 2/68/2005) of the Central Government Industrial Tribunal No. 2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Maryn Forwarding Corporation and their workmen, which was received by the Central Government on 24-4-2009.

[No. L-12025/1/2009-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
NO. 2, MUMBAI**

PRESENT: A. A. LAD, Presiding Officer

Misc/Appln/CGIT-2/3 of 2007

in

(Ref. CGIT-2/68 of 2005)

PARTIES:

M/s. Maryn Forwarding Corporation
B-98, Cotton Exchange Building,
2nd floor, Opp. Cotton Green Railway
Station, Cotton Green (E)

Mumbai-400 032 : ...Applicant

V/s.

Shri Dagdu D. Garge
General Labour Union
5, Kalekar Chawl
Sion Bandra Link Road
Mumbai 400 017.

: ...Opponent

APPEARANCES

For the Applicant : Mr. Sanjay Dhulapkar
Advocate.

For the Opponent : In person.

Mumbai, Dated : 19th January, 2009

JUDGEMENT

Applicant states as under :

1. Applicant is first party of Ref. CGIT-2/68 of 2005 which was engaged in the business of loading and unloading of shipments and transportations of containers.

2. On account of various aspects including shifting of shipment activities to Nhava Sheva Port there was considerable fall in the business of the company as a result of that, company suffered very heavy losses. Company had to stop its activities from April, 2005. It is stated that, the situation of company became so bad that Company was not having any liquid cash to make payment toward salary of employees. It is stated that creditors of the

company and finance institutions increased their pressure for recovery of their dues on the company. As a result of that, situation gone beyond the control of the company and no option remained with company but to close down its activities w.e.f. 20-12-2005. It is stated that during that period there was no employee working with applicant company and as such, no question arise to terminate services of any of the employee.

3. It is further stated that, in that whole process, company did not receive any notice from this court nor any intimation from other sources. Since there was closure of company, no body was in the office site of the company.

4. It is stated that one of the Partners of the Company Mr. Yogesh Patel, who was earlier residing at 7-B, Suvas Apartment, 68-F, Nepean Sea Road, Mumbai, said premises was taken over by Bank and sold off in the year 2006 for recovery of his debt. It is stated that Markand Patel, Second partner, on account of loss of business left the activities of the company and is engaged for religious work. As per the applicant on 15-4-2007, company received letter posted at the address of Partesh Patel, son of Markand Patel, which was handed over by Markand Patel from which applicant learnt that, an ex parte award was passed against the applicant company. It is stated that, since applicant was not aware of the reference pending before this court, did not appear in the reference which resulted in reference disposing ex parte. So it is prayed that decision given in the reference was given without hearing the applicant company. Applicant has good case. If said award is not set aside, it will affect on the applicant company. So it is prayed that award passed dated 31-10-2006 be quashed and set aside with direction to restore the Ref. CGIT-2/68 of 2005 and to decide on merits. Besides, both will get an opportunity to lead evidence.

5. This prayer is disputed by the opposite party. i.e. workman by filing reply Ex-7 stating that, false case is made out by the applicant company. It is stated that, applicant company purposely remained absent in the reference knowing that, reference was pending here. It is stated that, entire Patel family has got vested interest in the applicant company. They purposely remained absent in the proceeding. Since legal dues of the opposite party were not paid for closing the business. False case in made out only to prolong the proceeding and deprive the workman to get fruits of the award. So it is prayed that, application may be rejected.

6. In view of above pleadings following points arise for determination:

Issues

- (i) Whether applicant proves that it had sufficient reason to stay away from reference?

Findings

No

(ii) Is reference required to be restored? Yes

(iii) What order? As per order below.

Reasons

Issues 1 & 2

7. By this application, one of the partners of the applicant company states that, he was not aware about this reference pending before this Tribunal. The applicant company has closed down its activities w.e.f. 20-12-2005. At the time of closure, no employee was working with applicant company. Since applicant company has closed down its activities, no body was visiting the place of applicant company. During that period notice of reference was not served on the applicant company and as a result of that, reference was decided ex parte. It is disputed by workman saying that, false case is made out by applicant company.

8. Learned advocate for the applicant submits that reference was decided ex parte which is matter of record.

9. Record & proceedings reveal that, reference was decided ex parte on 31-10-2006. That means there was no pleading of applicant company and case of applicant in the reference about demand of the workman. So definitely decision given was a decision given ex parte. Applicant company files this application to restore the reference to decide on merits which in my considered view, require to consider in the interest of justice.

10. However, application is filed after four to five months from the date of the award. Workman is out of job and without any relief. The reason of leaving work place and no knowledge of proceeding has little scope to consider. So in the interest of justice, if I allow this application and restore Ref. CGIT-2/68 of 2005 on file to decide on merits by awarding cost of Rs. 1000/- from which I feel, it will meet ends of justice. So by awarding cost of Rs. 1000/- on applicant company, I am restoring Ref. CGIT-2/68 of 2005 to decide on merits. Hence the order :

ORDER

1. Application is allowed on depositing cost of Rs. 1000 to workman.

2. Ref. CGIT-2/68 of 2005 is restored on file to decide on merits.

3. After depositing Rs. 1000/- cost to workman, issue notice to workman to attend reference.

A. A. LAD, Presiding Officer

Date : 19-1-2009

नई दिल्ली, 27 अप्रैल, 2009

का. आ. 1366.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब एण्ड सिंध बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण न. 1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 313/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-4-2009 को प्राप्त हुआ था।

[सं. एल-12012/133/2001-आईआर(बी-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th April, 2009

S. O. 1366.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 313/2001) of the Central Government Industrial Tribunal No. 1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab & Sind Bank and their workman, which was received by the Central Government on 24-4-2009.

[No. L-12012/133/2001-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH

Case No. I.D. 313/2001

Sh. Pawan Kumar, S/o Shri Joginder Pal,
House No. 399, Gali No.3, Abadpura,
Jalandhar City-144001

...Applicant

Versus

Punjab & Sind Bank,
The Zonal Manager,
Model Town, Jalandhar
(Punjab)-144001.

...Respondent

APPEARANCES

For the workman : None
For the management : Shri J.S. Sathi.

AWARD

Passed on 4-12-08

Central Govt. vide notification No. L-12012/133/2001-IR(B-II), dated 31-10-2001, has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Punjab and Sind Bank in terminating the services of Shri Pawan Kumar S/o Shri Joginder Pal is just and legal? If not, what relief the workman is entitled to and from which date?"

2. None is present on behalf of the workman. Learned representative of the management is present. From last

many days fixed for the hearing of this case the workman is not ensuring his presence. The reference was referred by the Central Government in the year 2001. Several opportunities have been given to the workman but he is not availing the opportunity of being heard. It is already 1.15pm. At this stage, I have no option otherwise then to dismiss the claim of workman in reference for non-prosecution and return the reference to the Central Govt. as such. Accordingly, the reference is returned as such. Let the Central Government be informed. File be consigned. Chandigarh.

Dated: 4-12-08

G. K. SHARMA, Presiding Officer

नई दिल्ली, 27 अप्रैल, 2009

का.आ. 1367.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब एण्ड सिंध बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण न.-1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 233/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-04-2009 को प्राप्त हुआ था।

[सं. एल-12012/33/2001-आई आर (बी-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th April, 2009

S.O. 1367.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 233/2001) of the Central Government Industrial Tribunal No.-1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab & Sind Bank and their workman, which was received by the Central Government on 24-4-2009.

[No. L-12012/33/2001-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI G. K. SHARMA, PRESIDING
OFFICER, CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case No. I. D. 233/2001

Shri Ravi Dutt Sharma,
S/o Shri S. C. Dass Sharma,
B-VIII/40, Subhash Park,
Nurmahal, Jalandhar
(Punjab) 144001

....Applicant

Versus

The Punjab & Sind Bank,
The Zonal Manager,
P&SB, Model Town,
Zonal Office-2, Jalandhar
(Punjab) 144001.

....Respondent

APPEARANCES

For the Workman : Shri Ashwani Gaur.
For the Management : Shri J. S. Sathi

AWARD

Passed on : 17-2-2009

Government of India, vide notification No. L-12012/33/2001/IR(B-II), dated 8-6-2001 referred the following industrial dispute for adjudication to this Tribunal :—

“Whether the action of the management of Punjab & Sind Bank in terminating the services of Shri Ravi Dutt Sharma S/o Shri Shiv Charan Dass Sharma without initiating domestic enquiry w.e.f. 10-2-95 is just and legal? If not, what relief the concerned workman is entitled and from which date?”

The main issue for adjudication before this Tribunal is whether the management was justified in treating the services of the workman being voluntarily abandoned on account of his unauthorized absent, or a departmental enquiry was required under the facts and circumstances of this case? On perusal of the facts mentioned in the pleadings of the parties, it is clear that workman was working with the management as Daftri/peon. He absented from the services from 1-7-94 to 24-10-94, for the period of more than 90 days. Considering his request for leave on medical ground, he was permitted to join the duties on 25-10-94. He again absented from 21-11-94 for which he was served a letter dated 22-11-94, another letter on 19-12-94 to join the service with immediate effect. The workman did not complied with the direction and finally a notice was given to him on 2-1-95 calling upon him to report for duties within 30 days. The workman did not report and the management of respondent bank passed an order dated 10-2-95 to the effect that, that workman is deemed to be voluntarily retired from the bank services with effect from 2-2-95.

The workman has stated that he moved an application for leave on 22-11-94. He was seriously ill and was not in a position to serve the bank during the period in question.

All the applications relied upon by the bank are on record. Whereas, application dated 22-11-94 send to the bank under postal certificate is also on record. The workman has also filed the certificate issued by Dr. S. S. Khera, dated 7-8-95. The Doctor was also examined by this Tribunal.

I have heard learned counsel for both of the parties and perused entire materials on record.

The fate of this reference entirely depends on the interpretation of concerned provisions of bipartite settlement. I have gone through the concerned provisions.

It is the settled law of service jurisprudence that when the language of the statute is plain, clear and capable of having one meaning only, no interpretation is required and the court or any other adjudicatory authority is bound to accept the same meaning. The language of the provisions before this Tribunal is very clear and capable of holding one meaning only. As per the provisions, if any workman absented unauthorizedly from the service of the bank continuously for 90 days, it is open to the management of the bank to serve a 30 days notice asking him to report for the duties or to show the circumstances

under which he was unable to work with the management. If the workman during the period of 30 days reported to the bank the management has no option otherwise then to permit the workman to resume his duties. It is not open for the management to impose any condition precedent for joining. If the management is not satisfied with the joining of the workman about his misconduct, these provisions are not available to the bank but a regular departmental enquiry is necessary to be conducted by the bank against the workman. It was done by the bank. The workman was permitted to join on 25-10-94. Thereafter, from 21-11-94 the workman once again absented and it was open, as per the provisions of bipartite settlement, to the management to give 30 days notice after 30 days of absent because the workman absented with 30 days from resuming the duties on 25-10-94. In the fresh notice it was obligatory on the part of the management of the bank to mention the grounds and evidence, available, to show that the workman has no intention to serve the bank. It was not mentioned in the notice. On the other hand an explanation was called for to prove that the workman has no intention to serve, whereas, the provisions of bipartite settlement cast a duty on the management to appraise the workman with the cogent evidence to show that he has no intention to serve.

The application dated 22-11-94 given by the workman is on record. The contention of the workman that he was seriously ill was accepted by the management of the bank on 25-10-94. His application for leave on medical grounds was considered and leave sanctioned. There is sufficient material on record to prove that during the period in question the workman was seriously ill. Application dated 22-11-94 which was send to the management by the workman under postal certificate provide a reasonable opportunity to the management to consider the fact of his ailment. Without considering it, the management served a 30 days notice on whimsical ground that workman has no intention to serve.

The workman has filed the medical certificate of Dr. S. S. Khera. Dr. S. S. Khera was examined and cross-examined in this Tribunal. The wife of the workman, who alleged to have given the information about the sickness of the workman in November 1994 to the management, was also examined. On the genuineness of documents filed by the workman no question was asked by learned counsel for the management from Dr. S. S. Khera and another witness Smt. Santosh Sharma. Dr. Khera has categorically stated that the workman was not in a position to move and even to go out of the house. Under such circumstances, it was not possible for the workman to attend the office. It was beyond his reach even to reply the notice/notices served by the bank. It was initially in the notice of the bank that the workman is ill. It was not open to the management of the bank, as per the provisions of bipartite settlement to give 30 days notice without ensuring his physical and mental condition. Thus the provisions of bipartite settlement regarding voluntarily abandonment of services were not available to the bank under facts and circumstances of this case. It is true that

the workman raised an industrial dispute quite late. But considering the facts and circumstances of the case, it must have no effect on adjudication of this reference. In the Industrial Disputes Act, no limitation for raising any industrial dispute is given. It is true that certain judicial pronouncement are there that if there is any abnormal delay in raising an industrial dispute the delay should be justified. Under the facts and circumstances of the case, I am of the view that the workman was suffering with a severe mental problem. It was possible for him to reply the bank's letters and delay in raising the industrial dispute was the result of his mental condition.

Thus, on the basis of the above observation, I am of the view that the management of the bank is not justified in passing the order dated 10-2-95 treating the workman to have voluntarily retired from the service with effect from 2-2-95. It was duty of the management to permit the workman to resume the duties, whenever, he returned to the bank with medical certificate which was not done. After permitting him on duties it was open for the management to conduct an enquiry on his absence on medical grounds which was also not done. Accordingly, the workman shall not be treated to have voluntarily retired from the bank services and shall be considered to be in services.

The management of the bank is directed to permit the workman to resume the service within one month from the publication of this award. However, considering the facts and circumstances of the case, the workman will not be entitled for the back-wages but his seniority and pay is hereby ordered to be protected. Central Government be approached for publication of award, and thereafter, file be consigned.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 27 अप्रैल, 2009

का.आ. 1368.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब एण्ड सिंध बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 87/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-04-2009 को प्राप्त हुआ था।

[सं. एल-12012/12/2003-आई आर (बी-11)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th April, 2009

S.O. 1368.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 87/2003) of the Central Government Industrial Tribunal No.- 1 Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of Punjab & Sind Bank and their workman, which was received by the Central Government on 24-4-2009.

[No. L-12012/12/2003-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI G. K. SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1, CHANDIGARH

Case No. I. D. No. 87/2003

Shri Swinder Singh
C/o Shri R. P. Rana,
H.No.-2360, Sector-38-C,
Chandigarh.

....Applicant

Versus

The Zonal Manager,
Punjab and Sind Bank,
Zonal Office, Anritsar
(Punjab)

....Respondent

APPEARANCES

For the Workman : Shri R. P. Rana.
For the Management : Shri J. S. Sathi

AWARD

Passed on 17-2-09

Government of India, vide notification No. L-12012/12/2003/IR(B-II), dated 2-5-2003 referred the following industrial dispute for adjudication to this Tribunal :—

“Whether the action of the management of Punjab & Sind Bank in terminating the services of Shri Swinder Singh S/o Shri Balwant Singh Ex-Peon (Daily Wage Basis) w.e.f. 1-2-02 without any notice and without any payment of retrenchment compensation is legal and just? If not, what relief the concerned workman is entitled to and from which date?”

From the pleadings of the parties, it is clear that workman Late Shri Swinder Singh worked with the management of the bank as temporary peon from 13-12-85 to 31-1-02. He was disengaged from the services on 1-2-02. It is also admitted that no notice or terminal dues were paid to him before his disengagement. It is also admitted fact that the workman along with other co-workers filed the civil writ petition No. 834/02 before Punjab and Haryana High Court regarding the regularization of their services and apprehending termination of their services. The above writ petition was disposed off by Hon'ble the High Court vide order dated 14-1-02, directing the management to decide the representation of the workman dated 21-11-01, within two months. This representation was decided on 22-3-02, whereas, the services of the workman were terminated on 1-1-02.

It is the contention of the management, as per the pleadings and evidence on record that order passed by

the High Court regarding disposal of representation of the workman dated 21-11-01 within two months, has no concern and nexus with the termination of the services of the workman. It was further contended that workman had worked with the management at different branches and had not, accordingly, completed 240 days of work. His appointment was not made as per the rules of the department hence, no notice or terminal dues were required and in such case there was no violation of any provisions of Industrial Disputes Act.

The workman has proved by oral and documentary evidence that he worked for a very long time with the management of the bank and had completed 240 days of work with the management in the preceding year from the date of his termination. The management of bank has admitted that the workman was working regularly with it as temporary peon on daily waged basis. MWI. Shri Sukhdev Singh, the witness of the management in his cross examination has mentioned that workman had worked continuously from January 2001 to January 2002. He has also mentioned that no notice or retrenchment compensation was given to him before his termination. It is further mentioned that the work of peon is still in the bank. Industrial Disputes Act, protects the interest of workman against arbitrary termination. If a workman had worked with the management of any organization for more than 240 days in the preceding year from the date of his termination, the workman is under the protection of the provisions of the Act, regarding his termination. The services of the workman, under such circumstances cannot be terminated without notice and terminal dues as per the provisions of the Act. Furthermore, under such circumstances, the services of the workman can be terminated, but as per the provisions of the Act. The management of the bank has not complied with the provisions of the Act before terminating the services of the workman which make the termination illegal. Unfortunately, during the pendency of this reference the workman expired and his widow Smt. Ranjeet Kaur was substituted in statement of claim as per the provisions of industrial Disputes Act.

Facts and circumstances of this case also proved that the services of workman were terminated from the services of the bank shortly after passing the order by Hon'ble High Court of Punjab and Haryana, in a writ petition filed by workman along with co-workman for order of regularization of their services, even without proper compliance of the order regarding disposal of representation of the workman by speaking order within two months from the date of the order. It shows that there was a great nexus between the termination of the workman and his act of filing a writ petition before Hon'ble Court, which in my view is an unlawful labour practice. On this count, the termination of workman was also bad in law.

When the termination of any workman is held to be illegal, there are two possible remedies available to the workman. The workman can be reinstated into the services

and the second remedy is that he may be compensated by reasonable compensation. In this case, the workman is no more and his widow has been substituted, the only remedy left is the reasonable compensation to be provided to the widow of the deceased for the survival of his widow and children.

Whenever Tribunal comes to the conclusion that compensation is a reasonable remedy, it is also the duty of the Tribunal to award the compensation on some reasonable criteria. What should be a reasonable compensation depends on the facts and circumstances of the case. In this case, the reasonable criteria for calculating the compensation to be awarded is the pecuniary benefit to which late workman would have entitled, if he had been alive. Thus, considering the payment of wages at the time of his termination, depreciation of money and his illegal termination, I am of the view that Rs. 1,50,000 (one lakh and fifty thousand only) will be a reasonable compensation to be awarded to the widow of deceased workman and in my opinion it will be a reasonable and sufficient compensation. Accordingly, management of the bank is directed to deposit the amount of Rs. 1,50,000 within one month from the date of publication of award. Failing the widow of the workman will also be entitled for an interest at the rate of eight per cent per annum from the date of her substitution till the final payment. The reference is disposed of accordingly. Let the Central Government be informed. File be consigned.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 27 अप्रैल, 2009

का.आ. 1369.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इण्डियन ओवरसीज बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद, के पंचाट (संदर्भ संख्या 33/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-04-2009 को प्राप्त हुआ था।

[सं. एल-12025/1/2009-आई आर (बी-11)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th April, 2009

S.O. 1369.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 33/2004) of the Central Government Industrial Tribunal, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Indian Overseas Bank and their workmen, which was received by the Central Government on 24-4-2009.

[No. L-12025/1/2009-IR(B-11)]

RAJINDER KUMAR, Desk Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT
HYDERABAD

Present : Shri Ved Prakash Gaur, Presiding Officer

Dated the 20th day of January, 2009

Industrial Dispute L. C. No. 33/2004

BETWEEN

Sri Gorle Appalanaidu,
 S/o Late Gorle Chinnayya,
 R/o 37-11-149/1, Manikyamba
 Colony, Industrial Estate,
 Visakhapatnam-530 002

....Petitioner

AND

The Chief Officer and Disciplinary Authority,
 Indian Overseas bank,
 13-26-2, Regional Office,
 Apurupa Arcade (II Floor),
 Maharanipeta,
 Visakhapatnam-530 002

....Respondent

APPEARANCES

For the Petitioner : Shri K. Bala Krishna, Advocate
 For the Respondent : M/s. Alluri Krishnam Raju,
 G. D. Kumar, G. V. N. Babu,
 N. P. Rao, B. S. Reddy and
 N. V. Kumar, Advocates

AWARD

This case was taken in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in 1997 (3) LLJ Supplement, page 1141 in W. P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. The workman Sri Gorle Appalanaidu filed this petition challenging the action of the management dated 29-9-2003 and to direct the management to take the workman back into service with all service benefits.

3. It has been alleged by the petitioner that he was engaged to work as sweeper in the temporary status in Indian Overseas Bank Visakhapatnam w.e.f. 11-3-2002 on Rs. 1200 wages per month and he was discharged from service by the said employer on 26-4-2003. The workman has served a notice through registered post to management on 29-9-2003 to reconsider its decision of discharging the workman and to take back him into service. The management vide its reply dated 21-10-2003 through an advocate rejected the request of the workman. As such, he has challenged the action of the management through this petition and he prayed that this court be pleased to set aside the discharge order dated 11-9-2003 and workman be reinstated into his previous position.

4. A counter was filed by the management and the management has accepted that the workman has worked as sweeper on temporary status w.e.f. 11-3-2002 to

26-4-2003. They have further stated that a charge memo for misconduct was served on the workman. It is incorrect to state that there was no blame or the service record was unblemished. The management has alleged that it is absolutely false to state that hush hush enquiry was conducted in derogation of specific law and violation of the principles of natural justice. They alleged that charged employee was given proper opportunity. They have alleged that the workman has submitted a certificate issued by Municipal Upper Primary School, Chinna Waltair at the time of his initial engagement as part time sweeper as proof of his educational qualification and age. During the routine enquiry about the genuineness of these documents, the official of the bank visited the office of the District Educational Office, Visakhapatnam and there the official of the department informed that the said certificate was not genuine. The same was confirmed by the DEO, Visakhapatnam vide letter dated 30-11-2002. Subsequently, the bank issued a chargesheet dated 17-4-2003 for the misconduct as detailed therein. The petitioner replied to the same vide letter dated 26-4-2003. The petitioner vide letter dated 7-8-2003 asked for the copy of the certificate and documents. He also submitted his detailed explanation. After considering the material available before the Disciplinary Authority, he came to the conclusion that the charges are proved. Petitioner has submitted his educational qualification certificate which was not genuine. He submitted that false and fake certificate only to gain employment in the bank and thus has passed the order of termination of services. It is incorrect to say that hush hush enquiry was conducted.

5. I have heard counsel for both sides. The management has not been able to produce the record of the enquiry proceedings though sufficient opportunity was afforded to them.

6. The Learned Counsel for the petitioner has argued that the management has not produced the record of the enquiry proceedings. As such it cannot be said that the enquiry was conducted in proper and fair manner. He has relied on the case law reported in 2003(1) LLN 1026 of the Bombay High Court in the matter Pune Municipal Transport Vs. Subhash Shankarrao Khupase, wherein Hon'ble Bombay High Court has held that it is the duty of the employer to produce the record of the enquiry proceeding before the court. If the same has not been produced, it shall be held that the enquiry was not fair and proper.

7. I am in full agreement with the case law cited by the Learned Counsel for the workman. In this case also though the management has alleged that departmental proceedings were held and proper and full opportunity was given to the workman but the record has not been produced to elicit that fair and proper opportunity was given to the employee. Thus, on this simple ground itself, it is held that the enquiry alleged to have been conducted by the management is neither fair nor proper and thus the management has acted on the basis of a partisan report and action of the management can not be held to be legal

and valid. The petition is deserves to be allowed. The order of the management dated 26-4-2003 discharging the workman from the service is set aside and management is directed to reinstate the workman on the post of sweeper. The workman shall be entitled to pay only from the date of reinstatement is done only on the technical grounds.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 20th day of January, 2009.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1 : Sri Gorle Appala Naidu	Nil

Documents marked for the Petitioner

Nil

Documents marked for the Respondent

Nil

नई दिल्ली, 27 अप्रैल, 2009

का.आ. 1370.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक ऑफ इण्डिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (संदर्भ संख्या 41/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-4-2009 को प्राप्त हुआ था।

[सं. एल-12012/34/95-आई आर (बी-11)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th April, 2009

S.O. 1370.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 41/2002) of the Central Government Industrial Tribunal Nagpur now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Central Bank of India and their workmen, which was received by the Central Government on 24-4-2009.

[No. L-12012/34/95-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI A. N. YADAV, PRESIDING
OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/41/02

Petitioner/Party No. 1 : Shri Jagannath Biharilal Shukla,
R/o Dal Oli No. 1,
Kamptee-441 002

Versus

Respondent/Party No. 2 : The Regional Manager,
Central Bank of India,
Kamptee Road, Sadar,
Nagpur

AWARD

(Dated the 9th April, 2009)

1. The Central Government after satisfying the existence of dispute between Shri Jagannath Biharilal Shukla, R/o Dal Oli No. 1, Kamptee (Party No. 1) and the Regional Manager, Central Bank of India, Kamptee Road, Sadar, Nagpur (Party No. 2) referred the same for adjudication to this Tribunal *vide* its letter No. L-12012/34/95/IR (B-II) dated 30-5-1995 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) with the following schedule.

2. "Whether the action of the management of Central Bank of India, Nagpur in dismissing Shri J. B. Shukla, Cashier-cum-Clerk from service w.e.f. 2-1-1990 is legal and justified? If not, what relief is the said workman entitled to?"

3. It seems that initially the reference was made by the Central Government to CGIT, Jabalpur because the Court of CGIT at Nagpur was to be established. During the pendency before the CGIT, Jabalpur, my learned predecessor passed an Award on 20-8-99. The same Award was challenged before the Hon'ble High Court at Nagpur. The Hon'ble High Court set aside the Award and remanded the matter with the certain direction to decide the reference afresh. My learned predecessor without giving the clear findings about the validity of the enquiry had passed an Award and, therefore, after remand giving opportunity to both the parties by specific orders on 16-11-2006 vitiated the enquiry because it was not in accordance with the principle of natural justice and the workman was not given proper opportunity. However, the liberty was given to the management to prove the charges before the Labour Court. Accordingly, here at CGIT, Nagpur after transfer of the case, the evidence is recorded even giving opportunity to the parties to prove the charges and the Petitioner to defend it, both the parties adduced evidence to prove the charges and now I am proceeding to pass the final Award in the present case.

4. From the schedule of the reference, it is clear that I am expected to record my findings as to whether the order dated 2-1-1990 dismissing the Petitioner Shri J. B. Shukla and which is under challenge is legal and justified?

5. According to the petitioner when he was serving as a Cashier-cum-Clerk at Itwari Branch of the management, he was served with the chargesheet on 12-7-1988 by the Respondent Party No. 1. The allegations against the petitioner were that he had forged the signature of Shri Nagnathan, the then Chief Manager, Nagpur. It is alleged that the Petitioner on 5-2-1987 applied to Shri Om Sainath Co-op. Credit Society Ltd., Nagpur under its pay roll

scheme demanding the loan of Rs. 5,000/-. He has submitted the relevant papers under letter dt. 13-8-1987 from the employer addressing to the Manager of the Society. It is alleged that the undertaking as required by the procedure of the employer to deduct the loan from his salary was necessary. The Petitioner/Workman forged the signature of Shri N. Nagnathan, the then Chief Manager and submitted it to the Co-op. Society. However, the Society finding the signature on undertaking as forged referred it to the Chief Manager, on the basis of which the Petitioner was charge-sheeted under the Clause 19.5 (J) of the Bipartite Settlement.

6. Thus, the enquiry was initiated and on submitting the report by Inquiry Officer, the management on completion of enquiry after gave show-cause notice. The Petitioner was discharged as suggested in the enquiry report by the Inquiry Officer. The same as discharge/dismissal order is under challenge in this reference.

7. The Petitioner initially disputed the validity of the enquiry and as indicated above as per the direction of the Hon'ble High Court by separate order its validity was considered and as it was found without following the principle of natural justice, it was vitiated giving opportunity to the management of proving the charges before the Labour Court. Accordingly, as indicated above, both the parties have adduced the evidence to prove the charges.

8. The case of the Petitioner/workman is that the provision of Industrial Employment (Standing Orders) Act, 1946 and the Model Standing Order framed under the Industrial Employment Standing Order Rules are applicable to the Petitioner and other employees working with the Bank. Those provisions are mandatory in nature as per provision of it, the management was under obligation to conduct the enquiry proceedings within 3 months from the date of misconduct. Here the charge sheet itself issued after 2 years. Since sufficient time was elapsed, it was not proper to issue charge sheet against him and thus the action of even issuing the charges is illegal. Secondly, according to him the charges imposed are false. It is designed a plan against the Petitioner. The management had every reason for a revengeful attitude towards him because he had quarrelled on many occasions with the management taking issues of office matters. Article No. 1119 was already received by the Bank and it was in the possession of Mr. Paralikar. He could have traced the address of the sender. Thus, according to him the complete enquiry was false. It was pre-planned action with a view to remove the Petitioner from the service. The management succeeds in it. Finally, the Petitioner prayed to quash and set aside the dismissal order dated 2-1-1990. Direct the Bank respondent to reinstate the Petitioner in the service with the continuity and back wages and other consequential reliefs.

9. The management appeared and resisted the claim by filing its WS. Having admitted the submission of the Petitioner regarding his appointment and transfer, denied

that the past record of the Petitioner was excellent. The increments were granted to him in a routine manner. It has supported its order on dismissal as proper and correct.

10. On the basis of the above submission only points that arises for my consideration is as under :

"Whether the Order of dismissal dated 2-1-1990 is legal and proper".

11. In order to prove the charges, the evidence was recorded on merit before the Court as the enquiry was vitiated. The management examined 3 witnesses namely S/Shri N. Nagnathan, Pravin Paralikar and Ulhas Athale. Shri N. Nagnathan is a Chief Manager whose signature has been forged while Shri Pravin Paralikar was working as a Manager in the Itwari Branch while Shri Athale is a Handwriting Expert. The evidence of Shri Nagnathan shows that he had never worked at Itwari Branch. He was working as a Chief Manager at the Main Branch at Station Road, Nagpur. Obviously, he was never required to look after the day-to-day affairs of the banking business of the Itwari Branch, Nagpur. He was never posted in that Branch. Therefore, the Party No. 2 i.e. Workman had never worked under him. His evidence shows that he had no occasion to meet Shri J. B. Shukla. The general practice in securing the personal loan by the employee of the Bank from outside agency, it is necessary to inform to the Employer of Bank and complete the necessary formalities by making an application, whereas the Petitioner has directly applied to the Society. It is pertinent to note that Shri Nagnathan had left Nagpur on 9-8-1987, as he was transferred and he reported at Bangalore as a Regional Manager on 12-8-1987. Therefore, there was no question of even issuing certificate on 13-8-1987.

12. It is pertinent to note that the certificate on which the signature of Shri Nagnathan is forged is dated 13-8-1987 on which Shri Nagnathan was not even working either at Itwari Branch or at main Branch of the respondent's Bank. This shows that the signature is forged and it supports that the Petitioner/Workman has deliberately with an intension to secure loan, forged the signature of Shri Nagnathan. The facts of the case are that the Petitioner/Workman had applied for the loan with one Co-operative Society and as per procedure he was required to submit a certificate in the form of somewhat undertaking to recover the loan paid by that Society to its workman from his salary. It is undertaking or taking the responsibility of re-payment of loan and that certificate was forged by the Petitioner. In fact, the authority for issuing the above certificate was only the Branch Manager, but he sent the certificate under the signature of Shri Nagnathan, who was working as Chief Manager, Main Branch, Nagpur.

13. The evident of Shri Nagnathan is supported by Shri Athale, who is a Handwriting Expert. On behalf of the Petitioner, it is submitted that report of Shri Athale is not based on the original document i.e. certificate. Only a Xerox copies of it was given for his examination. But it makes no difference. Generally, when the disputed signatures are on heavy record the examiner of the documents simply

took the photocopies and he examines them. Therefore, there is nothing to infer that Shri Athale has committed any mistake to discard his evidence. His evidence establishes that the signature of Shri Nagnathan appearing on disputed document is not of person who has given specimen signatures.

14. It is also worthy to note that Shri Nagnathan had reason at all to make the false allegation against the Petitioner. He had never even seen him during his service at Nagpur. He had no occasion even to work along with him and practically he was not concerned at all with the working of Itwari Branch of the Nagpur. Therefore, there was no reason for him to issue such certificate and there are no reasons at all to give false evidence against him.

15. Another charge against the Petitioner is that the Petitioner had intercepted the official communication addressed to the Bank with a view to conceal his misdeavour. It is alleged that the Petitioner has removed the letters from reaching it to the Bank. On an enquiry by Shri Paralikar, he noticed that instead of 7 letters received from the Post Office he managed that the Bank should not receive the letters under which the Society has sought the clarification regarding the forged certificate. From the enquiry, Shri Paralikar had revealed that instead of getting the 7 letters which had received to the Post Office in the name of the Bank Management, he managed to send only 6 letters. The particular letter under which the Society has sought the clarification regarding the forged certificate was managed in such a way that it should not reach to the Bank. The evidence of Shri Paralikar is clear enough to prove it. Despite of cross-examination, his evidence remained unshaken on that point. On behalf of the Petitioner/Workman Mr. Golhar, Advocate argued since the Inquiry Officer had exonerated the Petitioner from the charge of intercepting the working of the Post Office. Now it cannot be opened and therefore, the evidence in that respect should be discarded. In fact, the enquiry has totally been vitiated and fresh enquiry is being done before the Labour Court for the charges against him. The Court definitely can consider that another issue of interception also because the total enquiry is a fresh and in such circumstances, in my view, the evidence proves that the Petitioner has intercepted in the work of Post Office also.

16. It is also necessary to point out that the Petitioner while making his mercy Petition to the various authorities of the Bank had admitted and confessed that he has forged the signature of Shri Nagnathan. Similarly, when the original charge-sheet was issued by the Bank, he has never submitted any explanation to it. He has not even submitted explanation to the Memo issued by the Bank before initiating the enquiry. It is also clear from the record that he raised the dispute before ALC after considerable delay more than 4 years. All these conducts of the Petitioner go to show that he had guilty mind and he had done it intentionally. From the record it is clear that both the charges are serious. Forging the signature is a charge of criminal nature and intercepting in the working of the Post Office was also a serious one. The management had

dismissed him from the service and in my opinion, it was proper punishment. In fact, it is a mis-conduct on the basis of which the Bank had lost its faith in the Petitioner and without faith it was not at all proper to continue him in the service. Thus the punishment was proper to the mis-conduct of the Petitioner. It is not disproportionate to the alleged misconduct. Hence, the Order of dismissal is proper and requires no interference. I dismiss the reference with no order as to cost.

Date: 09-04-2009

A. N. YADAV, Presiding Officer

नई दिल्ली, 27 अप्रैल, 2009

का.आ. 1371.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संवद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 151/97) का प्रकाशित करती है, जो केन्द्रीय सरकार को 24-04-2009 का प्राप्त हुआ था।

[सं. एल-12012/244/96-आई आर (बी-II)]

राजेंद्र कुमार, डेस्क अधिकारी

New Delhi, the 27th April, 2009

S.O. 1371.— in pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 151/97) of the Central Government Industrial Tribunal No. 1 Chandigarh now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Punjab National Bank and their workmen, which was received by the Central Government on 24-4-2009.

[L-12012/244/96-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH

Case No. I. D. 151/97

Shri Sunil Grover,
C/o Shri H. C. Arora,
H. No. 2299, Sector-44-C,
Chandigarh

....Applicant

Versus

The Regional Manager,
Punjab National Bank,
Civil Lines, Jalandhar

....Respondent

APPEARANCES

For the Workman : Shri Sandeep Bhardwaj
For the Management : Shri N. K. Zakhmi

AWARD

Passed on : 19-2-2009

Government of India, vide notification No. L-12012/244/96/IR(B-II), dated 22-7-97, referred the following industrial dispute for adjudication to this Tribunal :—

“Whether the action of the management of Punjab National Bank, Jalandhar in ordering voluntary retirement of Sh. Sunil Grover, Clerk-cum-Cashier w.e.f. 19-4-96 is legal and justified? If not, to what relief the said workman is entitled?”

I have gone through the leadings of the parties and evidence adduced by them. The main question for determination before this Tribunal is whether the workman shall be considered to be voluntary retired from the services of the bank w.e.f. 19-4-96 under clause 17 A of the bipartite settlement?

From the pleadings of the parties it is evident that the workman absented himself from the duties and consequently letters dated 8-8-95, 28-9-95, 19-9-95, 4-10-95, 10-11-95 and 12-11-95 were issued to him advising him to produce the medical certificate in support of his illness from Civil Surgeon, Jalandhar failing which he shall be considered and treated unauthorized absent from duties w.e.f. 8-8-95. It is also clear from the pleadings of the parties that on 13-6-95 a notice was issued to the workman to report on duty at branch office Lohiankhas within period of thirty days from the date of the notice otherwise he will be treated voluntarily retired from the services from the date of his unauthorized absent.

It is also apparent from the pleadings of the parties that on receiving the notice workmen approached to the bank and submitted a medical certificate but he was not allowed to join the services of the bank and was advised to obtain the medical-cum-fitness certificate from Civil Surgeon, Jalandhar. It was contended by the bank that the workman did not submit the medical certificate of Civil Surgeon, Janandhar, was sufficient to prove that he has no intention to join the services of the bank. On request of the workman to give it in writing that the certificate of Civil Surgeon is required, it was the contention of the bank that it was not obligatory on the part of the management of the bank to give it in writing because it was the requirement of law.

Both of the parties were afforded the opportunity for adducing evidence. Oral arguments were heard. Parties also preferred to file written briefs. I have gone through the written briefs filed by the parties.

The workman has admitted two notices given by the bank to him but has contended that he approach the bank for joining the services on 28-9-95. On the very day he also provided the medical certificate issued by Dr. Sharma of Sharma Nursing Home, Jalandhar. His presence was marked in the register. but he was directed by the manager of the bank to provided with the medical and the fitness certificate to the Civil Surgeon of the city. The workman once again on 30-8-95 requested to provide him in writing that the certificate of a Civil Surgeon is required

before permission to join the bank. It was denied by the management.

The fate of this case depends upon the interpretation of para 17A of the bipartite settlement. Para 17A of the bipartite settlement reads as under :—

“When an employee absents himself from work for a period of 90 or more consecutive days, without submitting any application for leave or for its extension or without any leave to his credit or beyond the period of leave sanctioned originally/ subsequently or when there is a satisfactory evidence that he has taken up employment in India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of the notice, stating interalia the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days of the notice or given an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of he said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service.”

The language of provisions of Section 17A of bipartite settlement is very well clear that when an employee has absented himself unauthorizedly continuously for 90 days and has not reported to the bank on account of his serving somewhere else or bank is reasonably satisfied that he has no intention for joining the duties, it is open to the bank to give the workman 30 days notice containing the grounds and evidence, if any, that workman is not intended to join the services or to resume the duties within the period of said 30 days. If even after receiving the notice the workman has neither reported to the bank nor shown any reasonable ground for his absence he shall be deemed to be voluntarily retired from the services of the bank.

It is also clear from the above provisions that after 90 days of unauthorized absent the notice of 30 days should contain the ground on which the notice is given and necessary evidence to be provided with regard to the fact that workman has no intention to join the services of the bank.

Where the language of any provision of the statute, rules/regulations is simple, clear, and capable of bearing one meaning only, no construction is required by the Court. Interpretation came into picture when there is any

ambiguity in the provision. Para 17A of the bipartite settlement is plain and capable of bearing one meaning only. The words "unless the employees reports for duty within 30 days of the notice or given an explanation of his absence within the said period of 30 days"--- shows that if workman after receiving the notice of 30 days, within the period of said 30 days, approached the bank for joining, the provisions of Section 17A for the purpose of presuming the workman voluntarily retired from the services are frustrated. As soon as the workman approached the bank for joining the services, it is the duty of the management to permit him as such. In this case workman reported the bank for joining on 28-9-95 but he was not allowed to join on account of his failure to provide the medical and fitness certificate from Civil Surgeon, Jalandhar. It was not open to the bank to impose any condition precedent for allowing the workman for joining his duties with the medical and fitness certificate of Civil Surgeon, Jalandhar. The workman had provided a certificate of Dr. Sharma from Sharma Hospital, Jalandhar and if the management was not satisfied with that certificate, it may have asked the workman to furnish the medical certificate as required by rules but after permitting him to join the services. It is admitted to the management that on 28-9-95, the workman approached to the bank for joining but he was not permitted because he has not furnished the desired medical certificate required by rules and regulations of the bank. It is not the intention of the legislation in the proceedings under para 17A of the bipartite settlement. If a wrong certificate is provided or no certificate is provided, it was open to the management to initiate the departmental proceedings as per the provision of bipartite settlement.

As stated earlier as soon as the workman approached the bank for permitting him to join the services of the bank, the provisions of para no. 17A are exhausted and frustrated. For any further wrong the workman may be punished but on the basis of regular departmental enquiry conducted under the provisions of bipartite settlement. No enquiry was conducted in this case. The workman approached the bank for joining, but he was not permitted. There is no evidence and material on record which proved that workman was working somewhere else or was having no intention to join.

Learned counsel for the management has relied upon a case law published in 2000 LABIC 2326, Syndicate Bank Vs. General Secretary Syndicate Bank Staff Association and another. In this very judgment in para no. 15, 17, 18, 19, Hon'ble the Apex Court has held that an enquiry would have been necessary if delinquent had submitted his explanation which was not acceptable to the bank or contended that he did report. for duty but was not allowed to join by the bank.

Moreover, he requested the management of bank to provide him in writing to get a medical certificate of a Civil Surgeon, Jalandhar. He was not provided with. The circumstances speak itself. If a person is under the treatment of a particular doctor, it is not easy for him, in the circumstances prevailing in India, to get a medical certificate from another doctor. The management's letters

that a medical certificate of Civil Surgeon, Jalandhar is required might have solved this problem. But management declined to provide it in writing on the ground that bank is not obliged to do so. In my view, there was no harm in given it in writing to help the workman who has already approached the bank for joining the services.

While the workman opted to join the services on 28-9-95, it was not open for the management of the bank to invoke the provisions of para 17A of the bipartite settlement and if the bank desired to act for his absence, it could only have been possible by way of departmental enquiry. Thus, the voluntarily retirement as claimed by the management of the bank is illegal and the workman shall be deemed to be in service of the bank. The workman has not worked for a long period. It is true that from 28-9-95 to 19-4-96 it was not his fault but the adamancy of bank in permitting him to join the bank without a medical certificate desired by the management. But for a long period the workman has been absented from the bank accordingly, in my view he will not be entitled for the back wages, but for the benefit of seniority and pay protection. As deemed voluntarily retirement was not valid and against the provisions of bipartite settlement, the workman is presumed to be in services of the bank. The bank is directed to permit the workman to resume the duties within one month from the date of publication of this award without back wages with continuity in service and pay protection. Let Central Government be informed, and thereafter, file be consigned.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 27 अप्रैल, 2009

का.आ. 1372.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आन्ध्रा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 135/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-04-2009 को प्राप्त हुआ था।

[सं. एल-12025/1/2009-आई आर (बी-1)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th April, 2009

S.O. 1372.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.135/2004) of the Central Government Industrial Tribunal Hyderabad, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Andhra Bank and their workmen, which was received by the Central Government on 24-4-2009.

[No. L-12025/1/2009-IR(B-II)]

RAJINDER KUMAR, Desk Officer

**ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
AT HYDERABAD**

**Present : SHRI VED PRAKASH GAUR, Presiding
Officer**

**Dated the 27th day of January, 2009
Industrial Dispute L.C. No. 135/2004**

BETWEEN

Sri E. Srinu,
S/o Late Nookaraju,
Venkateswara Nagar, Beach Road,
Maharanipeta,
VisakhapatnamPetitioner

AND

1. The General Manager
Andhra Bank, (Staff Department),
Central Office, Saifabad,
Hyderabad.
2. The Assistant General Manager,
Andhra Bank, Zonal Office,
Seethammadhara,
VisakhapatnamRespondent

APPEARANCES

For the Petitioner : M/s. A.V. Sambasiva Rao &
A.S.Ramasarma, Advocates

For the Respondent : M/s. S. Udayachala Rao,
S. Vikramaditya Babu, S. Mujib
Kumar & S.T. Ramani, Advocates

AWARD

The case was taken in view of the judgement of the Hon'ble High Court of Andhra Pradesh reported in 1997 (3) L.J. Supplement, page 1141 in W.P. No. 8395 of 1989 dated 3.8.1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. The Petitioner filed this petition against the Respondents questioning the action of the Respondents in disengaging him. He submitted that he has appointed joined as sub-staff on daily wages from 3.7.1995 with the Respondent and he has worked for 473 days in total excluding the breaks from 3.7.1995 to his termination dated 24.2.1997. He requests to direct the Respondents to reinstate him into service with back wages etc.

3. The Respondents filed counter denying the allegations made in the petition. It is submitted that there are settlements and agreements regarding temporary employees in sub-staff cadre. It is denied that the workman had worked for 473 days. It is prayed that the petition be dismissed.

4. Parties were directed to produce evidence in support their respective contentions. Petitioner workman filed his affidavit on 13.10.2006. He marked Ex. W1, which is copies of vouchers. Ex. W 2, which order copy in WP No. 22198/1997 and Ex. W3 is representation. After cross examination of Petitioner, he did not turn up to examine Respondent.

5. Case called out and parties called absent. It

appears that Petitioner is not interested to proceed in this case. Hence, the Petitioner is not entitled for any relief and thus, he is not entitled for any award by this Court. Hence, petition is dismissed.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant,
transcribed by her and corrected by me on this the 27th
day of January, 2009.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for Respondent
WW 1 : Sri E. Srinu	NIL

Documents marked for the Petitioner

EX. W1: Copy of bunch of seven vouchers
Ex. W.2: Copy of order in Wp 22198/1997
Ex. W3: Copy or representation dt. 19-5-1997

Documents marked for the Respondent

NIL

नई दिल्ली, 27 अप्रैल, 2009

का.आ. 1373 .— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक आफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 23/2006) को प्रकाशित करते हैं, जो केन्द्रीय सरकार को 24-04-2009 को प्राप्त हुआ था।

[सं. एल-12025/1/2009-आई आर (बी-11)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th April, 2009

S.O. 1373 .— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 23/2006) of the Central Government Industrial Tribunal, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workmen, which was received by the Central Government on 24-4-2009.

[No. L-12025/1/2009-IR(B-11)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
AT HYDERABAD**

Present : SHRI VED PRAKASH GAUR, Presiding Officer

**Dated the 14th day of October, 2008
Industrial Dispute L.C. No. 23/2006**

BETWEEN :

Sri A. Ravinder.

S/o Late A. Ramchander.

R/o Plot No.37, Siva Ganga Colony.

Opp: Kamineni Hospital, L. B. Nagar.

Hyderabad-79.

...Petitioner

AND

1. The Regional Manager/Disciplinary Authority,
Central Bank of India, Bank Street,
Hyderabad.
 2. The Assistant General Manager,
Hyderabad Zone/Appellate Authority,
Central Bank of India, Bank Street, Hyderabad.
 3. The Chairman and Managing Director,
Central Bank of India, Central Office, Chankdramukhi,
Nariman Point, Mumbai-400021
-Respondent

APPEARANCES

For the Petitioner : M/s. D. Goverdhana Chary, D.K.
Amaravathi, M. Srinivas, Reddy,
T.V. Thippa Reddy & G. Srinivas,
Advocates

For the Respondent : M/s. Ch. Siva Reddy & T.G.
Prasad, Reddy, Advocates.

AWARD

This is a case taken under Sec. 2A (2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W. P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Cinnappa and M/s. Cotton Corporation of India and two others and numbered in this Court as L.C.I.D. No. 23/2006 and notices were issued to the parties.

2 This petition is filed by the petitioner Sri A. Ravinder who stated in his petition that: he was appointed on compassionate grounds as clerk and he joined his duties on 17-8-1988. While discharging his duties faithfully, he was served with a memo on 17-6-2003 and later served with a charge sheet dated 11-8-2003 alleging, "with malafide intention deliberately obtained instant credit total amounting to Rs. 21,300 to his accounts on various dates without supporting cheques and fraudulently utilized the money for himself." Enquiry was conducted and report was submitted on 29-5-2004. He submitted his explanation on 17-7-2004. After personal hearing held on 16-8-2004, he was given punishment of compulsory retirement vide order dated 31-8-2004 against which he appealed to Appellate Authority vide representation dated 18-3-2005 but no avail. He prayed this court for reinstatement into service and all other attendant benefits.

3. The respondents filed counter and reiterated the material facts stated by the petitioner. It is submitted that, in 2003, while working as a clerk at Begum Bazar branch of the respondent bank the Petitioner with malafide intention obtained instant credit totally amounting to Rs. 21,300 to his account on various dates without supporting cheques and utilized the money for himself fraudulently as explained in the charge sheet dated 11-8-2003. Basing on the enquiry report he was compulsorily retired from service vide order No.HRO/PRS/DAD/2004-05 dated 31-8-2004. It is submitted that as he was proved guilty earlier, this petition is liable to be dismissed.

4. On several occasions Petitioner called absent. On

25-8-2008 and on 19-9-2008 Petitioner counsel filed memos for adjournment for filing Petitioner's evidence affidavit which were allowed. But he did not turn up on 14-10-2008. It appears that Petitioner is not interested in proceeding further in this case. Hence, the Petitioner is not entitled for any relief.

Award passed accordingly, Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 14th day of October, 2008.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 27 अप्रैल, 2009

का.आ. 1374 .— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 6/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-04-2009 को प्राप्त हुआ था।

[सं. एल-12025/1/2009-आई आर (बी-11)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th April, 2009

S.O.1374.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 6/2003) of the Central Government Industrial Tribunal, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workmen, which was received by the Central Government on 24-4-2009.

[No. L-12025/1/2009-IR(B-11)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT
HYDERABAD**

Present : SHRI VED PRAKASH GAUR, Presiding Officer

Dated the 5th day of November, 2008

Industrial Dispute L.C. No. 6/2003

BETWEEN:

Sri G. Venkatesh,
S/o G. Srisailam,
R/o 13-6-523, Tallagadda,
Hyderabad.

...Petitioner

AND

1. The Dy. Chief Manager (P),
Personal Department,
Syndicate Bank, Personal Administration
Division, (Awarded Staff),
Head Office : Manipal-576 119.

2. The General Manager, Zonal Office,
6-3-653, Syndicate Bank, Personal Section,
Workmen Wing, Pioneerhouse, Somajiguda,
Hyderabad-82.

3. The Branch Manager,
Syndicate Bank, Pattargatti Branch,
Hyderabad.

...Respondents

APPEARANCES

For the Petitioner : M/s. C. Sriram & P.V.V. Haripriya,
Advocates

For the Respondent : M/s. Alluri Krishnam Raju,
G. Dinesh Kumar, G.V.N. Babu &
N. Premananda Rao, Advocates

AWARD

This case was taken in view of the judgement of the Hon'ble High court of Andhra Pradesh reported in 1997 (3) LLJ Supplement, page 1141 in W.P.No. 8395 of 1989 dated 3.8.1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. The Petitioner filed this petition against the Respondents questioning the action of the Respondents in declaring him voluntarily retired. He submitted that he was appointed as attendar in the respondent bank in 1992. Due to his ill-health he could not attend his duties for 2 years for which he submitted medical certificate but the management informed him that he was voluntarily retired under clause No. 17 (a) of V.B.P.S. vide impugned order No. REF:PD:PAD:AS:0087:1833:2000 dated 7.7.2000. It is submitted that he approached the Hon'ble High Court through WP No. 13625/2001 in which he was directed to establish the same by adducing evidence before the appropriate forum under Industrial Disputes Act. He prays this Court to direct the Respondent to reinstate him as a regular employee with all consequential benefits.

3. As against this, the Respondents filed a counter denying the allegations in the claim statement of the petitioner. It is further submitted that the case of the petitioner does not come under Sec.2A (2). It is submitted that at no point of time the petitioner informed the management about his sickness or applied for leave as per rules. It is submitted that notices were issued to his address last recorded in the bank as per rules. His past record shows four chargesheet/show cause notice. Lastly, as he was unauthorized absent for 2 years, under clause 17 (a) of Bipartite Settlement which deals the service conditions of the workmen in banking industry, he was given notice, for which he did not respond, he was treated as voluntarily

retired. Hence, this petition be dismissed as no principles of natural justice were violated.

4. The petitioner filed chief examination affidavit and marked the following documents. Ex.W1 is the order copy of WP No. 13625/2001 dated 2-4-2002. Ex.W2 is the original medical certificate of Osmania General Hospital, Hyderabad. Ex.W3 is OGH, Hyderabad outpatient card. Ex.W4 is also another out patient card dated 9-11-2000. Ex.W5 is the envelope addressed to WW1 bearing postal stamp dated 10-7-2000. Ex.W6 is letter No. REF:PD:PAD:AS0087:1833:2000 dated 7-7-2000. And Ex.W7 is letter of respondent to WW1 vide No. 158/3002/2002/Hpg/GTY dated 7-10-2002 and he was cross examined to some extent. Later, case called out several times. Petitioner, or his counsel does not respond to call. The case is fixed for workmen's further cross examination. He was absent and no application for adjournment is being moved. Hence, workman's evidence is closed.

5. I have gone through the material available on the record. The Petitioner has questioned action of Respondent in retiring him voluntarily without information. Whereas, the Respondent submits that information is passed to his address last given. Since Petitioner has not taken credit to appear for the cross examination nor cross examined the MW 1 and has not filed any arguments or argued in person, it proves that the Petitioner is not interested to defend himself, the Petitioner is not entitled for any relief and thus, he is not entitled for any award by this Court. Hence, petition is dismissed.

Award passed accordingly. Transmit.

Dictated to Smt P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 5th day of November, 2008.

VED PRAKASH GAUR, Presiding Officer
Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri G. Venkatesh	MW1: NIL
Documents marked for the Petitioner	
Ex.W1: Copy of the order in WP No.13625/2001	
Ex.W2: Medical certificate from Osmania General Hospital, Hyderabad	
Ex.W3: Out patient card of Osmania General Hospital, Hyderabad	
Ex.W4: Out Patient Card of Osmania General Hospital, Hyderabad dt. 9-11-2000	
Ex.W5: Postal envelope addressed to WW1 dated 10-7-2000	
Ex.W6: Copy of Letter No. REF:PD:PAD:AS:0087:1833:2000 dated 7-7-2000.	
Ex.W7: Copy of letter of respondent to WW1 vide No. 158/3002/2002/Hpg/ GTY dated 7-10-2002	

Documents marked for the Respondent

NIL.

नई दिल्ली, 27 अप्रैल, 2009

का.आ. 1375.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं सी.पी.डब्लू. डी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 66/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-04-2009 को प्राप्त हुआ था।

[सं. एल-42012/60/2002-आई. आर. (सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 27th April, 2009

S.O. 1375.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 66/2002) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai now as shown in the Annexure, in the Industrial Dispute between the management of C.P.W.D. NEW BOMBAY CENTRAL DIVISION, and their workmen, which was received by the Central Government on 27-4-2009.

[No. L-42012/60/2002-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI.

Present: A. A. LAD, Presiding Officer

Reference No. CGIT-2/66 of 2002

Employers in relation to the management of Central Public Works Department

The Executive Engineer, CPWD,
Navi Mumbai, Central Division,
New CGO Complex, 7th floor,
CBD-Belapur,
New Mumbai-400614.

First Party

V/s.

Their Workmen

President,
CPWD Mazdoor Union,
C.P.W.D. Enquiry Compound,
CGS Colony, Kane Nagar,
Mumbai-400037.

Second Party

Shri P.S. Sutar

APPEARANCE

For the employer: Mr. V.Narayanan, Advocate

For the Workmen: Mr. Jaiprakash Sawant, Advocate.

Date of reserving the Award: 05-09-2008.

Date of passing the Award: 04-03-2009.

AWARD

The matrix of the facts as culled out from the proceedings are as under:

1. The Government of India, Ministry of Labour by its Order No.L-42012/60/2002-IR(CM-II) dated 20th August, 2002 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication.

“Whether the action of the Ex. Engineer CPWD, NMCD, CBD, Belapur in terminating the service of Sh. P.S. Sutar, M.L. Driver w.e.f. 1-1-2001 is legal and justified? If not, to what relief the workman is entitled to?

2. Claim Statement is filed by the concerned workman P. S. Sutar at Exhibit 5 making out the case that, he was appointed by the Management to work as M.L. Driver with effect from 27-5-1991. According to the concerned workman he worked continuously from 1991. It is contended that, he was holding valid driving licence to work as M.L. Driver. It is contended that, to deprive the benefits available to workmen on such a post and discriminatory treatment was given by the Management to the concerned workman. It is contended by the concerned workman that, this Tribunal in Reference No.CGIT-2/105 of 1998 passed an Award on 21-6-1999 directing 1st Party to regularize the concerned workman on availability of the post. According to 2nd Party, however, he was not regularized. Said order was challenged by 1st Party by filing Writ Petition No.4121 of 2001 in which High Court stayed the order of the Tribunal, According to 2nd Party since he worked for more than 240 days continuously he is entitled for regularization in the employment of the 1st Party.

3. This is disputed by the 1st Party by filing written statement at Exhibit 7 making out the case that, there is no ‘employer’ ‘employee’ relationship between the concerned workman and the 1st Party. It is contended that, the concerned workman was appointed purely on temporary basis. It is stated that, the vehicle on which the concerned workman was working has been auctioned and now there is no vehicle and work is not available for the concerned workman. Besides, he was not appointed by giving him appointment order. It is stated that, there is no ‘employee’ and ‘employer’ relationship between the parties. Since 2nd Party was appointed on contract basis he cannot claim permanency as direct worker of the 1st Party. It is prayed that, the prayer prayed by the concerned workman should not be granted.

4. Rejoinder is filed by the concerned workman at

Exhibit 9 denying the case of the 1st Party and making out the case that, he should be regularized.

5. In view of the above pleadings Issues were framed by my Ld. predecessor at Exhibit 11 which I answer as follows:

ISSUES	FINDINGS
1. Whether the employer-employee relationship exists between the Parties?	No
2. Whether the workman worked continuously for more than 240 days?	Yes
3. Whether the action of the Executive Engineer CPWD, NMCD, CBD, Belapur in terminating the services of Shri P.S. Sutar, M.L. Driver w.e.f. 1-1-2001 is legal and justified?	Yes
4. What relief the workman is entitled to?	No

REASONS

ISSUE NOS. 1 & 2:

6. 1st Party claims that, there is no employee-employer relationship between the 2nd Party and the 1st Party. It is pointed out by the 1st Party that, 2nd Party was not appointed by giving appointment order, after adopting selection process and selecting by following interviews amongst others. It is the case of the 2nd Party that, he worked for more than 240 days and hence entitled for regularization and protection under Industrial Disputes Act, 1947.

7. According to 1st Party though concerned workman worked for 240 days on contract basis and when he worked as contract worker he cannot claim benefit of 240 days working for and claim permanency.

8. To prove that, 2nd party relied on the affidavit filed by him at Exhibit 13, in lieu of his examination, where he reiterates that, he worked with 1st Party from 1991 as M.L. Driver. He states that, he was having valid driving licence and qualifications to work as M.L. Driver. In the cross he admits that, he does not possess any appointment order issued by 1st Party. He also admits that, the vehicle on which he was working is scrapped. Against that 1st Party examined 2 witnesses, one at Exhibit 19 and another at Exhibit 21. Both have stated about the procedure followed by 1st Party in engaging contract workers. Both are silent on the personal knowledge about the 2nd Party and his qualifications and nature of his work.

9. Both have submitted written arguments i.e. by

2nd Party at Exhibit 24 and 1st Party at Exhibit 25.

10. From the evidence and arguments submitted by both, it reveals that, 2nd Party was not appointed by 1st Party. He was appointed as a contract worker. Admittedly he worked for more than 240 days but nature of work which he did was as a "contract worker". Besides, 2nd Party has no appointment order issued by 1st Party. He admits that, the vehicle on which he was working was scrapped. Besides it is not shown by 2nd Party that, he is direct employee of the 1st Party and 1st Party was having direct control over his activities. Moreover no specific case is made out by 2nd Party, that, regarding salary, nature of benefits offered by 2nd Party accorded by 1st Party during his employment. Merely he claims permanency because he worked for more than 240 days which is to be decided.

11. One has to note that, 1st Party is Government Department which has its own rules and regulations which are followed for recruitment of employees. Unless and until posts are got sanctioned and those are vacant and are advertised, candidates cannot called for interview and procedure of interview cannot be followed and without that employee cannot be selected on those posts. Since 2nd Party is unable to establish that, in the absence of said he cannot claim post and show any relationship with 1st Party in my considered view, though he worked for more than 240 days, it does not permit him to claim and permanency.

12. Besides as stated by 1st Party that, it is Government Department it requires permission to recruit the employees, it requires grants and budget at the time of filling vacancy and post then posts are filled by advertising and or names are called from Employment Exchange or by giving advertise publicly for the posts in newspapers. But all these things have not happened in this case.

13. If we consider all this coupled with the case made out by both, I also conclude that, there is no relationship of employer-employee between 1st Party and the 2nd Party. I also conclude that, though the 2nd Party worked with the 1st Party for more than 240 days, it does not permit him to claim permanency or continuity. So I answer these Issues to that effect.

ISSUE No. 3 & 4:

14. Here 2nd Party has failed to establish that, he is employee of the 1st Party and he was recruited in vacancy or by following due process of law, the question of decision of the 1st Party in not regularizing the concerned workman is illegal and unjustified does not arises. As stated above 2nd Party is a contract worker and was appointed without following due process of law of selection and he was selected for the work. Moreover, the vehicle on which he was working is scrapped. Besides it is not shown by the 2nd Party that, still the work is available and somebody else is working on it. When it is not the case of the 2nd Party workman that, he was not the contract employee

working with 1st Party he cannot claim permanency. He want to benefit of other persons who were regularized by the Department and on that his claim base. However, it is not even pointed out in what circumstances those were regularized and why he was not regularized. No specific case is made out by the concerned workman of parity about regulation of other employees on the basis of which he is claiming regularization.

15. If we consider all this coupled with the case made by both, I conclude that, 2nd Party is not entitled for any relief. So I answer these issues to that effect and pass the following order:

ORDER

Reference is rejected with no order as to its costs.

A. A. LAD, Presiding Officer

Bombay,

4-3-2009

नई दिल्ली, 28 अप्रैल, 2009

का.आ. 1376.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं भारतीय खाद्य निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 72/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-04-2009 को प्राप्त हुआ था।

[सं. एल-22012/198/2005-आई आर (सीएम-11)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 28th April, 2009

S.O. 1376.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.72/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the Management of Food Corporation of India and their workmen, received by the Central Government on 28-4-2009.

[No. L-22012/198/2005-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 22nd April, 2009

Present : Shri A.N. Janardanan, Presiding Officer

Industrial Dispute No. 72/2006

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Food Corporation of India and their Workman)

BETWEEN :

Sri M. Govindan,
1/470, Bharatiyar Street,
Nanmangalam Via
Kovilambakkam,
Chennai-600114

1st Party /Petitioner

Vs.

1. The Sr. Regional Manager,
Food Corporation of India,
Regional Office,
5/54 Grems Road,
Chennai-600006

....1st Respondent

2. The Distt. Manager.

Food Corporation of India,
Distt. Office, 623 Anna Salai,
Chennai-6

.....2nd Respondent

APPEARANCES

For the Petitioner :

None

For the 1st & 2nd Mangement :

M/s Imthias

AWARD

The Central Government, Ministry of Labour vide its Order No. L-22012/198/2005-IR (CM-II) dated 20.07.2006 referred the following Industrial Dispute to this Tribunal for adjudication.

The Schedule metioned in that order is :

"Whether the action of the management of Food Corporation of India in superannuating of Sri M. Govindan w.e.f. 31.05.2001 is legal and justified? If not, to what relief is the workman entitled?"

2. The reference was taken on file as I D No. 72/2006. Pursuant to notice, the Respondents entered appearance. In spite of repeated and numerous attempts, the petitioner could not be served with notice. Every time notice issued to him was returned unserved reporting no such addressee. The several attempts directed through the Ministry of Labour and Employment were also futile to ascertain even his last known address. While the case stood posted from time to time in this manner, the petitioner represented in person before this Tribunal on 09.01.2009. Thereafter again there has not been any representation by or on behalf of the petitioner and at the fag end, he has been called absent and set ex-parte.

3. There has not been any statement of claim complete with relevant documents, list of reliance and witnesses filed by him in the ID raised by him as required under the reference.

4. The first and second Respondent filed objections to the reference, an epitome of which is as follows :

The petitioner was employed as Departmental Labourer to work at Madras Harbour. The employment of the petitioner was controlled by Standing Order for Workmen employed at Madras Harbour by Food Corporation of India as per which the superannuation age is 58 years. The service conditions such as wage structure, other monetary benefits applicable to him are

on par with the workers of the Chennai Port Trust and Dock Labour Board. He cannot be reckoned as an employee of Food Corporation of India. The age of retirement is not included in the 11 conditions set forth in the Schedule-IV of the ID Act, 1947. The superannuation age of departmental labourer was initially enhanced to 60 years and subsequently reduced to 58 years just following the action of the Dock Labour Board without issuing notice under Section-9A of the ID Act. But was done by Chennai Port Trust as per Gazette Notification dated 05-01-2001 issued by the Ministry of Surface Transport. There is no change of service condition and issue of notice under Section-9A of ID Act is not needed. There is no illegality in the action taken. Legal division of FCI, Chennai advised not to issue notice under Section-9 since the superannuation age in the Standing Order itself is 58 years. Under Central Government Policy also the superannuation age was once enhanced from 58 to 60 and subsequently reduced to 58 years, repeating the same process once again on the reverse. No amendment had been made in the Standing Order. No objection had been raised when the Government Order was implemented on 31.05.2001. The present dispute after 6 years is hit by latches and lapses. The Hon'ble High Court of Madras vide its judgment rendered by his Lordship, Justice K. Chandru upheld the reduction of retirement age as 58 years by Chennai Port Trust. The dispute may be dismissed.

5. Points for consideration are :

- (i) Whether the action of the Respondent in superannuating Sri M. Govindan w.e.f. 31-05-2001 is legal and justified?
- (ii) If not to what relief the workman is entitled?

6. The petitioner has not appeared or prosecuted his case. There is no pleading, evidence in support thereof or any arguments advanced on behalf of the petitioner for answering the reference.

Point No. 1

7. The argument for the learned counsel for the Respondents brings out the following points :

The Change in the retirement age is not a change in the service condition. The retirement age is not one coming among the 11 conditions in Schedule-IV of the ID Act and, therefore, no notice under Section-9A of ID Act was necessary. Under proviso to Section-9A of the ID Act, if there are statutory regulations, no notice is necessary provided the regulations have been published in Government Gazette. The material, legal or factual aspects have not been brought home by the petitioner to show that his claim is sustainable by way of pleading, document and/or any other evidence. The petitioner is therefore not entitled to any relief in his favour. Therefore, it is, to be held that the action of the Management is only legal and justified and it is found so.

Point No. 2

8. In the light of above finding, it is held that the action of the Respondent is only legal and justified. The

petitioner is not entitled to any relief.

9. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd April, 2009)

A. N. JANARDANAN, Presiding Officer

Witnesses Examined :—

For the I Party/Petitioner : None

For the II Party/Management : None

Documents Marked :—

On the petitioner's side :

Ex. No.	Date	Description
	Nil	

On the Management's side

Ex. No.	Date	Description
	Nil	

नई दिल्ली, 28 अप्रैल, 2009

का. आ. 1377.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं भारतीय खाद्य निगम के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 77/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-2009 को प्राप्त हुआ था।

[सं. एल-22012/272/2007-आईआर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 28th April, 2009

S. O.1377.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 77/2007) of the Central Government Industrial Tribunal-cum- Labour Court, Chennai now as shown in the Annexure, in the Industrial Dispute between the management of Food Corporation of India, and their workmen, which was received by the Central Government on 28-4-2009.

[No. L-22012/272/2007-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI

Wednesday, the 22nd April, 2009

Present : A. N. Janardanan, Presiding Officer

Industrial Dispute No. 77/2007

[In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Food Corporation of India and their Workman]

BETWEEN

Sri K. Narayanan,
S/o T. B. Krishnamurthy
S.V. Flats, 10 Ponniamman Koil,
2nd Cross Street
Rajakeelpakkam Selaiyur,
Chennai-600073.

1st Party/Petitioner Union

V/s.

1. The Sr. Regional Manager,
Food Corporation of India,
Regional Office 5/54 Greams
Road, Chennai-600006.

1st Respondent

2. The District Manager,
Food Corporation of India,
District Office, 623 Anna Salai,
Chennai-600006.

2nd Respondent

APPEARANCE

For the Petitioner M/s. S. Sathiyamurthy
and R. Gowtaman.

For the 1st & 2nd Management M/s. Imthias.

AWARD

1. The Central Government, Ministry of Labour *vide* its Order No. L-22012/272/2007-IR(CM-II) dated 26-11-2007 referred the following Industrial Dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is :

“Whether the action of the management of Food Corporation of India in superannuating of Sri K. Narayanan w.e.f. 31-5-2001 is legal and justified? If not, to what relief is the workman entitled?”

2. This reference is numbered on file as ID 77/2007. Pursuant to notice both the parties entered appearance through their respective counsel and filed their Claim and Counter Statement as the case may be.

3. The allegation in the claim statement, bereft of unnecessary details are as follows :

The petitioner was a handling mazdoor in the Food Corporation of India at Chennai Harbour under the control of the 2nd Respondent. Throughout India, the retirement age of FCI Employees is 60 years. The Port Trust had reduced the superannuation age from 60 to 58 years. FCI also decided likewise. The change is a change of service condition. Hence notice has to be given under Section-9A. But no notice was given to the petitioner and other 37 employees. On 31-5-2001, the 2nd Respondent suddenly reduced the retirement age to 58 years with notice served on 1-6-2001. The said action is illegal, arbitrary and against the principles of natural justice. The superannuation age of FCI Employees is 60 years. There is no justification to

reduce the age of Port Workers alone. It being discriminatory, the petitioner is entitled to continue in service till 31-5-2003. The petitioner is employee of the FCI entitled to equal treatment with other employees. Being prematurely made to retire, he is entitled to wages and other benefits such as Gratuity, Earned Leave and Bonus. It is prayed that the action may be held null and void and direct the Respondents to pay wages and other benefits to the petitioner till 31-5-2003.

4. The 1st Respondent filed a Counter Statement and the 2nd Respondent filed a Counter Statement adopting that of the 1st Respondent and it is contended as follows :

The employment of the petitioner was controlled by Standing Order for Workmen employed at Madras Harbour by Food Corporation of India as per which the superannuation age is 58 years. The service condition such as wage structure, other monetary benefits applicable to him are on par with the workers of the Chennai Port Trust and Dock Labour Board. He cannot be reckoned as an employee of Food Corporation of India. The age of retirement is not included in the 11 conditions set-forth in the Schedule-IV of the ID Act, 1947. The superannuation age of departmental labour was initially enhanced to 60 years and subsequently reduced to 58 years just following the action of the Dock Labour Board without issuing notice under Section -9A of the ID Act. But was done by Chennai Port Trust as per Gazette Notification dated 5-1-2001 issued by the Ministry of Surface Transport. There is no change of service condition and issue of notice under Section-9A of ID Act is not needed. There is no illegality in the action taken. Legal division of FCI, Chennai advised not to issue notice under Section-9 since the superannuation age in the Standing Order itself is 58 years. Under Central Government Policy also the superannuation age was once enhanced from 58 to 60 and subsequently reduced to 58 years, repeating the same process once again on the reverse. No amendment had been made in the Standing Order. No objection had been raised when the Government Order was implemented on 31-5-2001. The present dispute after 6 years is hit by laches and lapses. The Hon'ble High Court of Madras *vide* its judgement rendered by his lordship, Justice K. Chandru upheld the reduction of retirement age as 58 years by Chennai Port Trust. The dispute may be dismissed.

5. The points for consideration are :

(i) Whether the action of the Respondent in superannuating Sri K. Narayanan w.e.f. 31-5-2001 is legal and justified?

(ii) If not to what relief the workman is entitled?

6. In this Industrial Dispute, after the petitioner entered appearance and filed his Claim Statement, thereafter remained ex-parte throughout. In spite of a good

number of adjournments given, he did not turn up. Therefore, he has been called absent and set ex-parte. The 1st and 2nd Respondent filed further Memo of Objections.

Points No. 1

7. The petitioner has not come to the box to give any evidence or to file an Affidavit in lieu of Chief Examination. No evidence whatever has been adduced by him to substantiate his contentions. On the side of both the Respondents also no evidence has been adduced.

8. The learned counsel for the Respondent having in contemplation the contentions of the petitioner as disclosed from the Claim Statement argued that the change in the retirement age is not a change in the service condition. The retirement age is not one coming among the 11 conditions in Schedule-IV of the ID Act and, therefore, no notice was necessary nor contemplated. There was gazette notification issued on 5-1-2001 with regard to reduction in the age of retirement and implementation was on 31-5-2001. No objection had been raised to the same. There is no illegality in the action. The learned counsel pointed out that under proviso to Section-9A of ID Act, if there are statutory regulations no notice is required provided the regulations have been published in the Government Gazette. Here there has been gazette publication and in spite of such gazette publication, no one has complained about the action. Here it is not brought home by the petitioner that the age of superannuation is one of the conditions in the Schedule-IV or that such fixation of age has become a customary practice or a service condition. It is also not shown by the petitioner that there is any amendment made in the Standing Orders of the FCI Departmental Labours applicable to him. So there cannot be said to be any change in the retirement age.

Under the legal position, as now emerges, in the light of decision of Madras High Court that owing to change in statutory regulations, the statutory boards having been given powers to roll back the age of retirement to 58 and the proviso to Section-9A clearly stating that if there are statutory regulations, no notice is required under Section-9A, the contentions of the petitioner are apt to be rejected and the point is only to be answered against the petitioner. So found.

Point No. 2

9. In the light of above findings, it is held that the action of the Respondent is only legal and justified. The petitioner is not entitled to any relief.

10. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd April, 2009).

A.N. JANARDANAN, Presiding Officer

Witnesses Examined :—

For the I Party/Petitioner	:	None
For the II Party/ Mgmt.	:	None

Documents Marked :—

On the Petitioner's side		
Ex. No.	Date	Description
	Nil	
On the Management Side		
Ex. No.	Date	Description
	Nil	

नई दिल्ली, 28 अप्रैल, 2009

का. आ. 1378.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फेडरल बैंक लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 02/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-2009 को प्राप्त हुआ था।

[सं. एल-12012/136/2006-आईआर(बी-1)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 28th April, 2009

S. O. 1378.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 02/2007) of the Central Government Industrial Tribunal-cum- Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of Federal Bank Ltd., and their workmen, received by the Central Government on 28-4-2009.

[No. L-12012/136/2006-IR(B-1)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Monday, the 20th April, 2009

Present : A. N. Janardanan, Presiding Officer

Industrial Dispute No. 2/2007

(in the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Federal Bank Ltd., and their Workman)

BETWEEN

The General Secretary, Federal Bank Employees Union Central Office, Post Box No. 10, Aluva-683101, Kerala.	1st Party/Petitioner Union
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V/s.

The Federal Bank Ltd., IInd Party/Respondent
Representation by its Chief
Manager Personnel and
Industrial Relation Department
Federal Towers, Post Bag No.103,
Aluva-683101.

APPEARANCE

For the Petitioner : M/s. P.V.S. Giridhar,
S. Bhargavan
For the Management : M/s. M. Vaidyanathan,
N. Sankar, R. Rajashree.

AWARD

1. The Central Government, Ministry of Labour *vide* Order No. L-12012/136/2006-IR(B-I) dated 13-12-2006 has referred the dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is :

“Whether the punishment of dismissal from service imposed on Sri M. Natarajan by the Management of Federal Bank Ltd., is legal and justified? If not, to what relief the workman is entitled to?”

2. After the receipt of industrial dispute, this Tribunal has numbered it as ID 2/2007 and issued notices to both sides. Both sides entered appearance through their Advocates and filed their claim and counter statement respectively.

3. The allegations in the Claim Statement are briefly as follows :

The dispute is challenging the punishment of dismissal from service without notice imposed on the employee. He entered service in Federal Bank as a Bankman in 1980 and was promoted as Clerk in 1983 and has a service of 25 years. He had been the President of the Petitioner Union at the State level and as such has had happened to be at loggerheads with the Management. On 10-4-2003, he was placed under suspension on certain allegations. In the Charge Memo dated 9-5-2003, it is alleged that the workman had “instigated and colluded with Mr. K. Ramakrishnan, Bankman of the branch to fraudulently withdraw Rs. 2,55,000 from SB A/c. 3403 in the name of one S. Raju at Thanjavur branch on 12 occasions during May, 1988 to September, 2002 using withdrawals forms without the knowledge and consent of the party”. Mr. Natarajan and Ramakrishnan had been in very intimate relationship with several financial and other dealings between themselves. The Charge Memo was based on a confession given by Mr. Ramakrishnan admitting himself to have had fraudulently withdrawn the amount on 12 occasions on an information provided by Mr. Natarajan that the sum was available in the said account who had noticed that there was a balance of Rs. 1.50 lakhs in the

account for about a year while SB balancing was taken by him during 1998. The Charge Memo was issued without proper application of mind or without any credible material except the confession of the self-confessed fraudster. The workman by his reply dated 23-5-2003 denied the allegations. He also requested for supply of copies of documents which was not responded. On 4-7-2003 an enquiry was ordered into the charges and the same was held from 8-10-2003 and lasting till 10-12-2004. The enquiry was conducted in a manner prejudicial to the workman without giving him adequate opportunity to defend himself. The request of the workman before the Enquiry Officer to cause production of various documents was not pursued by the Enquiry Officer. Three of the said documents are (i) work allotment for the year 1998 pertaining to Thanjavur branch of the bank (ii) Balancing schedule/ledger from 1-1-1998 to 31-5-1998 (iii) copies of domestic enquiry proceedings conducted against Ramakrishnan. The said documents were crucial for the defence of the workman which would have established his innocence. The Enquiry Officer failed to take adverse inference on the failure of the Management to produce the documents. Without the production of witnesses for Cross-Examination, he allowed marking of several statements of witnesses. The request for recalling MW2 for Cross-Examination in the light of testimony of other witnesses was denied by the Enquiry Officer for no reasons. MW2 was permitted to be examined without his having been included in the list of witnesses and without informing the workman in advance. Documents including ME-40 not already in the original list of documents were marked without giving copies in advance to the workman. The Enquiry Officer found the charges proved without an objective and impartial assessment and consideration of the evidence. The representation submitted by the workman on 10-5-2005 pointing out the flaws in the findings was rejected by the Disciplinary Authority who on 4-7-2005 mechanically agreed with the findings and proposed punishment of dismissal and after granting an opportunity of hearing to the workman on 30-8-2005 imposed the penalty of dismissal from service directing the period of suspension be treated as not-spent on duty. The appeal preferred by the workman before the Appellate Authority was rejected on 24-1-2006. The Industrial Dispute raised 9-3-2006 having failed, the present reference is occasioned by the Central Government under order dated 13-12-2006. The imposed punishment is arbitrary, unreasonable and illegal and is liable to be set aside for the reasons that it is violative of all norms and fairness of justice. It has been passed on the perverse findings of the Enquiry Officer who failed to assess the evidence in a fair, objective and impartial manner. In fact Enquiry Officer identified himself with the prosecution and totally failed to apply his mind. The findings are unsustainable in law and are not based on the legally admissible evidence. He relied on the statements of persons (ME-33, ME-34,

ME-36, ME-37) who have not been cited as witnesses and not produced for Cross-Examination by the workman. The workman has not been given adequate opportunity to defend himself and the Enquiry Officer violated the principles of natural justice gravely prejudicing the workman. The Enquiry Officer failed to compel the Management to produce the three documents mentioned above. He failed to take adverse inference for non-production of the same. He turned down the request of the workman to recall MW2 for Cross-Examination, permitted the examination of MW2 not already in the list of witnesses and without informing the workman in advance and permitted marking of several documents including ME-40 not already included in the original list of documents without giving copies of the same in advance. These irregularities have vitiated the enquiry proceedings. The orders of the Disciplinary Authority and Appellate Authority are based on perverse findings of the Enquiry Officer and are unsustainable in law for the reasons that the only piece of evidence mainly the confession of MW2 has not been corroborated in material particulars. The circumstances cited by the prosecution corroborating confession of MW2 have not been proved. There is no evidence for close relationship or financial dealings between Ramkrishnan and Natarajan. There is no evidence to prove the knowledge of the workman regarding the balance in the account of Raju. There is no evidence to show that the withdrawal forms did not bear the signature of Raju. The Enquiry Officer perversely placed reliance on the testimony of MW1 investigating Officer to fill up the lacunae in evidence. Evidence of MW3 is hearsay. MW3 recorded the confession statement of MW2. The Enquiry Officer acted on surmises and conjectures. Out of the 12 transactions, the workman was on leave on the five occasions. MW2 Ramkrishnan had prior knowledge of account of Raju on his own admission and it was he who filled up the pay-in-slip for the same. All the withdrawal slips were either approved by the Asstt. Manager or Special Assistant after which alone the workman cashier could have paid the amounts. In the case of non-production of the Pass Book with the withdrawal forms, the approving officials should have paid special attention to the comparison of signatures. It is for the Management to prove each circumstances and the ingredient of the charges. The penalty of dismissal is grossly disproportionate to the charge. It is prayed that the dismissal may be set aside and the workmen be reinstated in service with arrears of pay and allowances.

4. The allegations in the Counter Statement filed by the Respondent are briefly as follows :

The petition is not maintainable and is to be dismissed in limini Mr. Raju, a Savings Bank Account holder of the Thanjavur branch of the Federal Bank Limited had deposited Rs. 1.50 lakhs and two cash certificates of Rs. 25,000 each. A cheque with no 751704 for Rs. 50,000

issued by him was dishonoured due to insufficiency of funds whereupon it was reported by him that he never visited the branch for a long period and his cheque book and pass book were in his safe custody. He then lodged a complaint that the amount has been fraudulently withdrawn from his account. The amount was paid to him by the Respondent with interest. An investigation conducted revealed that 12 fraudulent withdrawals had taken place on different dates from 28-05-1998 till 19-09-2002 under various withdrawal forms withdrawing different sums of money totaling to Rs. 2,55,000. During the investigation Mr. Ramkrishnan, another employee of the bank confessed that he colluded with the petitioner for the fraudulent withdrawals. Thereupon the petitioner was suspended pending enquiry. Charges were framed for gross misconduct on his part and as well as for the abetment and instigation for the fraudulent withdrawal of money. The Investigating Officer after verifying the relevant records filed a report upon which the charges were framed against the workman. It was also revealed that Mr. Ramkrishnan and the petitioner were intimately dealing between themselves. The principles of natural justice have not been violated. In the enquiry conducted by the Enquiry Officer appointed, petitioner defended his case. All the available records and relevant documents were produced before the Enquiry Officer. MW2 Ramkrishnan was elaborately cross-examined on behalf of the petitioner. It is not correct to say that the Enquiry Officer failed to compel the Management to produce relevant documents. Allegations to the contra are vague and bereft of details. It is on a proper enquiry by the Enquiry Officer that the charges were proved in the wake of which the petitioner was dismissed from service. The order was confirmed by the Appellate Authority. The order of dismissal is warranted and a lesser punishment is inadequate since the Respondent failed to repose confidence on the petitioner. The enquiry held was fair, impartial, not perverse or illegal. The prescribed procedure had been followed prior to dismissal. In the event of being found by this Tribunal that technical flaws have been committed by the Respondent, an opportunity is to given to rectify the flaws. It is prayed that the petition may be dismissed.

5. The points for consideration are :

- (i) Whether the punishment of dismissal from service of the petitioner is legal and justified ?
- (ii) If not to what relief the workman is entitled ?

6. On the side of the petitioner, WW1 was examined and Ex. W 1 to Ex. W 12 were marked on the side of the Respondent. MW1 was examined and Ex. M 1 to Ex. M 27 were marked.

Point No. 1

7. Precisely the charge against the delinquent whose cause is espoused by the Petitioner Union is that

he instigated and colluded with Mr. K. Ramakrishnan, Bankman to fraudulently withdraw Rs. 2,55,000 from SB A/c No. 3403 which is in the name of S. Raju. On this aspect, the said Ramakrishnan, MW2 gave a confession statement, Ex. M 38. The argument of the learned counsel for the petitioner is that to act upon a confessional statement, the same should have the quality of acceptability with some amount of credible evidence. It is further argued that there is no evidence for the delinquent and Ramakrishnan sharing alcoholic drinks being together. It is again argued that a criminal may rope in another also and therefore to attribute culpability with the delinquent, the confession given by Ramakrishnan alone is quite insufficient. The learned counsel would argue that the finding of the Enquiry Officer is perverse. Another limb of the argument is that the enquiry is not fair and proper. The delinquent was refused to be supplied with documents in the domestic enquiry. The delinquent had no occasion to know the balance in the account of Mr. Raju, the learned counsel further argued. Ex. M33 to Ex. M 37 are marked without examining the witnesses and therefore that part of the evidence is not to be considered. It is further contended that since the three documents have not been produced by the Management adverse inference has to be drawn against it. The denial of further cross-examination of MW2 at a subsequent stage of the enquiry is also alleged as a circumstance violating the principles of natural justice. His argument is that MW2 was suddenly put into the witness box without his name having been there in the witness list MW2 was later refused to be summoned again. It is further pointed out that ME-40 was marked without giving copy of it in advance to the petitioner the confession of co-accused MW2 is assailed as not reliable in the absence of corroboration. The non-examination of S. Raju is pointed out as another circumstance fatal to the Management. The evidence of MW1 cannot be of any substantive nature. The learned counsel summed up his arguments by saying that the prosecution has not proved all the ingredients of the charge by adducing evidence for the instigation and for the collusion alleged against the employee and to prove that no consent of S. Raju has been obtained for the withdrawal of the claims.

8. As against this, the contentions of the learned counsel for the Respondent are that there is a confessional statement given by Ramakrishnan regarding collusion and instigation from the workman for fraudulent withdrawal of money from the account of S. Raju and that they shared the amount. Regarding the non-supply of the copies of work allotment and balance sheet for the year 1998, he would contend that those documents have not been relied upon for the finding entered in this case. According to him they are not documents kept for a long time and are not available also. There was already sufficient opportunity given to the workman to cross-examine the witnesses. He further pointed out a circumstance of the workman Natarajan having had shown undue anxiety to

collect money from staff and to replace the lost money and that the same is indicative of his instigation and collusion with Ramakrishnan to defraud bank by fraudulent withdrawal. According to the learned counsel what is needed is only evidence of a credible nature which would be well satisfied with some iota of evidence. According to him the confessional statement of Ramakrishnan is sufficient to incriminate the petitioner apart from which there are also other circumstances to implicate him. The prosecution has left no stone unturned in proving the charge and that the charge against the delinquent is fully established to sustain the finding of guilty entered against him and the same does not warrant interference by this Tribunal.

9. He would further argue that the punishment awarded is also not to be interfered with. The delinquent conducted misconduct by misappropriating public trust money which is an offence against the public.

10. The main thrust of the argument of the learned counsel for the delinquent is that the confessional statement given by Ramakrishnan is not reliable to find the delinquent guilty. According to him, a criminal is always with a tendency to rope in another. But, discernibly the confessional statement is not the only piece of evidence available against the delinquent. There are other circumstances also showing that the delinquent was actually involved in the fraudulent affair. He has been showing undue anxiety to collect money from the staff members and replace the fraudulently withdrawn money so as to avoid disciplinary action which might eventually entail in his dismissal from service which has actually happened in this case. This fact spoken to by MW3 is corroborative of the confession statement given by Ramakrishnan. In industrial adjudication what is needed is credible evidence and not evidence beyond reasonable doubt as required in criminal proceedings. Again the evidence needs to be only of a preponderating probability. Here Ramakrishnan could not be found to have given confessional statement against the delinquent workman simply to rope him in the charge here. He was not readily volunteering to implicate Natarajan but was doing so in answer to question by MW3 as to the involvement of someone else since MW3 thought Ramakrishnan alone could not have done it. This shows that Ramakrishnan was not out and out to implicate the workman in order to merely rope in him.

11. For the cross-examination of MW2 sufficient opportunity had been given. It is far-fetched contention that opportunity to further cross-examine the witness was denied to him. The evidence of MW1 though has been assailed as not substantive in nature being based on his findings during the course of investigation and are therefore the results of the investigation strictly not admissible in evidence, furnishes materials logically probative to a prudent mind to hold that statements given by staff members as to the factum of being found the

delinquent and Ramakrishnan in company very often though they wanted such facts not to be stated in their statements for obvious reasons are true and reliable suggestive of the fact that both moved often in close association. There is no perversity in the finding entered. Based on the confession corroborated by the circumstance mentioned above any reasonable man would come to such a finding. There need not be any hesitation to hold that the finding entered is just and proper. The punishment imposed is also just in proportion to the gravity of the misconduct. Hence there is no scope for interference with the finding and the punishment imposed on the delinquent employee. This Tribunal is reminded of the fact that during an enquiry of this kind there is no scope for re-appreciating the evidence. The punishment is legal and justified. It is not sitting as a Court of Appeal. The delinquent Workman is therefore not entitled to any relief.

Point No. 2

12. In the result, the petitioner is not entitled to any relief.

13. The reference is answered against the petitioner.

(Dictated to the P. A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 20th April, 2009)

A.N. JANARDANAN, Presiding Officer

Witnesses Examined:

For the I Party/Petitioner : WW1 Sri M Natarajan

For the II Party/Management : MW1 Sri C. Raghunandan

On the petitioner's side

Ex. No.	Date	Description
Ex. W1	09-05-2003	Charge Memo
Ex. W2	23-05-2003	Reply to the Charge Memo
Ex. W3	04-07-2003	Notice of Enquiry
Ex. W4	08-08-2003	List of Witnessess
Ex. W5	13-04-2005	Enquiry Report
Ex. W6	10-05-2005	Reply to Enquiry Report
Ex. W7	04-07-2005	Show Cause Notice of Disciplinary Authority
Ex. W8	30-08-2005	Order of Penalty
Ex. W9	30-09-2005	Appeal
Ex. W10	24-01-2006	Order of Appellate Authority
Ex. W11	01-11-2001	Certificate of Merit
Ex. W12	06-07-2000	Federalite's Merit Card

Documents Marked : On the Management's side

Ex. No.	Date	Description
Ex.-M1	10-04-2003	Suspension Order
Ex.-M2	09-05-2003	Charge Sheet-cum-Enquiry Order
Ex.-M3	23-05-2003	Petitioner's reply to the charge memo
Ex.-M4	04-07-2003	Notice of Enquiry
Ex.-M5	08-08-2003	Notice of Enquiry
Ex.-M6	25-08-2003	Notice of Enquiry
Ex.-M7	26-08-2003	Notice of Enquiry

Ex. No.	Date	Description
Ex.-M8	04-09-2003	Notice of Enquiry
Ex.-M9	27-09-2003	Notice of Enquiry
Ex.-M10	10-11-2003	Notice of Enquiry
Ex.-M11	27-11-2003	Notice of Enquiry
Ex.-M12	08-12-2003	Notice of Enquiry
Ex.-M13	13-01-2004	Notice of Enquiry
Ex.-M14	05-02-2004	Enquiry Proceedings
Ex.-M15	08-04-2003	Management of Ex-ME1 to ME-42
Ex.-M16	07-08-2004	Defense Ex-D1 D18
Ex.-M17	04-11-2004	Petitioner's reply
Ex.-M18	10-12-2004	Written Argument note submitted by the Petitioner
Ex.-M19	13-04-2005	Findings of the Enquiry Officer
Ex.-M20	04-07-2005	Order passed by the Disciplinary Authority
Ex.-M21	15-07-2005	Petitioner's reply- Personal hearing
Ex.-M22	15-07-2005	Personal hearing for the show cause memo dated 04-07-2005
Ex.-M23	30-08-2005	Final order passed by the Disciplinary Authority
Ex.-M24	05-12-2005	Appeal preferred by the petitioner
Ex.-M25	28-12-2005	Personal hearing before the Appellate Authority
Ex.-M26	28-12-2005	Written submission filed by the petitioner before the Appellate Authority
Ex.-M27	24-01-2006	Order passed by the Appellate Authority

नई दिल्ली, 28 अप्रैल, 2009

का. आ. 1379.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एल. आई. सी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ नं.-1 के पंचाट (संदर्भ संख्या 167/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-2009 को प्राप्त हुआ था।

[सं. एल-17012/01/2004-आई. आर.(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 28th April, 2009

S. O. 1379.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 167/2004) of the Central Government Industrial Tribunal-cum- Labour Court No.-I, Chandigarh as shown in the

Annexure, in the Industrial Dispute between the management of L.I.C., and their workmen, received by the Central Government on 28-4-2009.

[No. L-17012/01/2004-IR(B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH**

- Case No. I.D. No. 167/2004

Ms. Nisha Rani D/o Sh Kapoor Chand, Plot No. 151, 22
Acre Scheme Improvement Trust Colony, Barnala, Distt.
Sangrur (Punjab)-148101.

...Applicant

Versus

- (1) The Senior Divisional Manager, Life Insurance Corporation of India, Divisional Office, Durgi, Ludhiana.
- (2) The Chairman Life Insurance Corporation of India, Yogakshema, Jeevan Marg, Mumbai.
- (3) The Zonal Manager, Life Insurance Corporation of India, North Zone, Jeevan Bharti 124, Connought Circus, New Delhi-110001.

...Respondent

APPEARANCE

For the Workman : Sri B. N. Sehgal.
For the Management : Sri Deepak Arora.

AWARD

Passed on 20-4-2009

Government of India *vide* notification No. L-17012/1/2004-IR(B-1), dated 12-4-2004, referred the following industrial dispute for judicial adjudication to this Tribunal:—

“Whether the action of the management of Life Insurance Corporation of India, Ludhiana in terminating the services of Ms. Nisha Rani D/o Shri Kapoor Chand w.e.f. 28-5-2002 without any notice and without any payment of retrenchment compensation is legal and justified? If not, to what relief the concerned workman is entitled to and from which date?”

After receiving the reference both of the parties were provided the proper opportunity of being heard. They filed their respective pleadings and availed the opportunity for adducing/filing their respective evidence.

There is no dispute on the issue that *vide* employment notice dated 29-12-1994, applications were invited for the appointment in different categories. One of the conditions of the employment notice was as follows:—

“Those who are empanelled will be offered appointment as and when vacancies arise, in the mean while they will be offered appointment on temporary basis as and when need for such temporary appointment arise”.

Workman Nisha Rani applied for the post of Assistant. She appeared in the written test conducted by the Life Insurance of India on 11-6-1995. She qualified the written test and was interviewed on 10-1-1996. She was selected by the recruitment board of LIC and was empanelled for the list of 23 selected candidates. Thereafter, from 12-4-1996 to 28-5-2002, she was provided with the work for a fixed term of 89 days. Again, she was provided with the work several times with intermittent breaks and after 28-5-2002 she was not provided with any work. It is the contention of the management that on 2-2-1996 the list of 23 candidates, selected on basis of the examination conducted by the Life Insurance of India was cancelled. The notice of cancellation was published in different newspapers on 26-11-2007. It is admitted that the Life Insurance of India has initiated for fresh recruitment without giving any weightage to the candidates selected and empanelled on the basis of the previous competitive examination.

It is the contention of the workman that she was selected in the examination conducted by the Life Insurance Corporation of India as per its rules and regulations. She was provided with the job as per his appointment letter but different colour was given to her appointment which is an unlawful labour practice. No retrenchment compensation, no notice before her termination was given to her which makes her termination illegal and void.

On the other hand, the management of Life Insurance Corporation of India has contended that as per rules of the department no temporary employee can claim for regularization of his or her services. The appointment letters given to the workman for different periods were for a fixed term and on expiration of that term the services of workman terminated automatically. The last term expired on 28-5-2002, thus, on 28-5-2002 her services terminated automatically. It was further contended that no notice or retrenchment compensation was required to be given as the nature of work rendered by the workman was purely contractual.

The reference referred to this Tribunal is regarding the legality of termination of the services. The workman rendered the services on the basis of selection list which was prepared after a written test and an interview. It is not disputed that she was provided with the work on the basis

of his selection but the reference only speaks about legality of the termination order and primarily has no concern with the selection list. But the selection of the workman and his rendering the services to the management of Life Insurance Corporation of India is so interrelated and interconnected that for adjudication of this reference cannot be separated. Moreover, under circumstances where out of two interrelated issue one issue is referred by the Central Government and Central Government is silent on another and it comes to the notice of this Tribunal that the workman raised the industrial dispute regarding the another issue as well, it is legal, moral and ethical duty of the Tribunal to adjudicate both of the issues.

The proceedings before this Tribunal are of different nature. This Tribunal is empowered by the legislation to adopt its own procedure and it is sufficient to consider the intention behind the legislation. Thus, on the basis of the above observation, I am of the view that the Tribunal should adjudicated both of the issues namely regarding the selection of the workman based on a written test and interview, as per the rules of Life Insurance Corporation of India and providing her the work on a contract basis after that selection.

In Secretary, State of Karnataka and Others Vs. Uma Devi and others J. T. 2006 (4), SC, 420 and in other catina of Judgments Hon'ble Supreme Court has emphasize that every department should go for the regular selection against the permanent vacancies. Life Insurance Corporation of India honoured this ration of the above judgment and initiated the recruitment procedure. As per the evidence of parties, the selection was made as per the procedure mentioned in the rules of Life Insurance Corporation of India. There is no contention of any of the parties that the procedure adopted and selection thereafter, lacks on any count. Thus, the workman was legally selected for the post of Assistant and thereafter, she was provided with the work based of the contractual obligation as mentioned in advertisement that as and when work will be required selected candidates shall be provided with the work on temporary basis. They were to provided with the work on temporary basis. Thus, the providing of the work has the nexus with the list prepared by the department on the basis of lawful examination. If the work is available temporary appointment cannot be given for 89 days or such specific time. If it has been done by the Life Insurance Corporation of India, certainly, it will amount to unlawful labour practice because it will be termed to be done with the intention to escape the department from any lawful liability which may be created under the Industrial Disputes Act. No doubt, it is mentioned in the affidavit of the witness who appear before Life Insurance Corporation of India that as soon as the work was over the services of the workmen were terminated but the management is unable to explain how he comes to know that a particular work will be finished within 89 days only and thereafter, with

the gap of 4 to 5 days (sometimes more) again the work was provided with to the workman. Thus, for the purposes of providing the job to the workman, it will be considered that she was provided with the job not on contractual basis, but on the basis of the selection list as a temporary employee. Thus, the status of the workman shall be considered as the temporary employee and not of the contractual employee and the gaps which have been given in between so called two contracts are nothing but unlawful labour practice.

The management without any cause cancelled the list of selected candidates vide notification dated 2-2-1996. It was published in the newspaper after one year and nine months on 26-11-2007. The cancellation of selection list have question mark as follows :-

- (1) What was the reason to cancel the list of selected candidates on 2-2-1996, which were selected by a lawful examination ?
- (2) What was the reason for publishing the same in the newspapers on 26-11-2007, after one year and nine months ?
- (3) What was the reason that after canceling the list of selected candidates the process for fresh recruitments started by the Life Insurance Corporation of India ?

As stated earlier, there was no legal or other infirmity in selecting the candidates which were empanelled in the list. It was also a contractual obligation of the Life Insurance Corporation of India that as and when vacancies will be available their services will be regularized. But without ensuring whether vacancies are available or not, the list was cancelled infringing the rights of at least 11 lawful selected candidates. Workman is one of them. In spite of not given the preferences to the expert hands who were selected in an examination lawfully conducted by the department, the process for fresh recruitment was initiated. The list was cancelled on the basis of whims of the department. There was no iota of evidence on record to show a reasonable cause or reason for canceling the list of selected candidates. If the lawfully selected candidates are available to the department who are also having the credit of work experience, why the department initiated the process for fresh selection is unanswered. It is true that virus of any selection procedure cannot be challenged before this Tribunal, but before this Tribunal the infringement of right of selected candidates is in question. The rights of the selected candidates, the workman is one of them, are infringed by arbitrary, capricious and illegal act of the management by canceling the list and not providing the work to the duly qualified candidates. Thus, it was obligation of the Life Insurance Corporation of India to exhaust the list against the vacancies, if available and then to initiate the process for fresh selection. In advertisement life of the penal was not mentioned. It was only mentioned that as and when

vacancies will be available the candidates who were empanelled were to be regularized. Vacancies and work are available as the Life Insurance Corporation of India has started the process for selection against these vacancies.

Moreover, this list was said to be cancelled on 2-2-1996 whereas, the workman continued to work up to 28-5-2002. These two circumstances shows that the list was ordered to be cancelled by a subsequent order with retrospective date. The first circumstance is that the workman continued to work up to 28-5-2002 and the second circumstance is that this order of cancellation was made public and conveyed after one year and nine months which create the doubt on its genuineness.

Admittedly, no notice or retrenchment compensation was given to the workman. As stated earlier, for all purposes the workman was a temporary employee working with the management of Life Insurance Corporation of India on the basis of the list which was prepared on a lawful examination conducted by the Life Insurance Corporation of India. She will be considered to work as temporary employee and breaks shown by the department shall be having no effect on her temporary status. As stated earlier, that as per the contractual obligation, the services of the workman were to be regularized as and when vacancies were available and this regularization of the services cannot be denied by the management arbitrarily. It is true that the rule of department does not confer the right of regularization of service to temporary employee, but, if work is available and posts are also available, the management is bound to honour the list of candidates selected on the basis of lawful competitive examination. It can only be denied when there is no work, no post or workman has been guilty of misconduct. There is no iota of evidence that termination of the services was due to the act of the workman. Thus, as disclosed in the body of this award, it was an arbitrary act of the management by which the list was suddenly cancelled and accordingly, the services of the workman were terminated illegally.

The reference is answered by holding that termination of the workman was illegal. She is entitled for the services as per contractual obligation for which she was selected through the lawful competitive examination conducted by the Life Insurance Corporation of India. Life Insurance Corporation of India is directed to provide with the work to the workman within one month from the date of publication of the award and also to regularize her services as and when vacancies are available. As disclosed

by the management work is available because the procedure for fresh selection has been initiated. Considering the facts and circumstances of the case, I am of the view that the workman will not be entitled to any back wages, but her seniority will be protected. Let the Central Government be informed and, thereafter, file be consigned.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2009

का.आ. 1380.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नार्थन रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ नं. 1, के पंचाट (संदर्भ संख्या 53, 29/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-04-2009 को प्राप्त हुआ था।

[सं. एल-41012/08/1994-आई आर (बी-1)]

[सं. एल-41012/167/1993-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 28th April, 2009

S.O. 1380.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government here publishes the award (Ref. No. 53, 29/1995) of the Central Government Industrial Tribunal-Cum-Labour Court No-1, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of Northern Railway, and their workmen, received by the Central Government on 28-4-2009.

[No. L-41012/08/1994-IR(B-I);

No. L-41012/167/1993-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH.**

Case No I. D. 29/95 & 53/95

(1) Shri Mohinder Pal S/o Shri Dharam Chand, Bajri Campy College Road, Near Salex Tax Office, Phatankot.

(2) Shri Girdhari Lal, Village:- Sheikhey Chak, P.O. Satryan Camp, The. R.S. Pura, Jammu (J&K). ...Applicants

Versus

The D.R.M. (Divisional Railway Manager), Northern Railway, Firozpur (Punjab) ...Respondent

APPEARANCES

For the workman : Sri D. R. Sharma

For the management : Sri N. K. Zakhmi

AWARD

Passed on:- 17-4-2009

This award shall disposed off two industrial disputes namely ID No. 29/95, Ref. No. L-41012/167/93-IR(B), dated 3-5-95, Shri Mohinder Pal Vs. Northern Railway and ID No. 53/95, Ref. No. L-41012/8/94-IR(B-I), dated 1-6-95, Shri Girdhari Lal Vs. Northern Railway.

Common questions of law and facts are involved in both of the references, hence both are disposed off by the single award.

Parties were afforded opportunity for their evidence on their respective pleadings.

Opportunity of being heard including the arguments oral and written was also afforded to the parties.

As per pleadings of parties and considering the nature of references, it is evident that main issue before this Tribunal in both of the references is whether the termination of both of the workmen was illegal, and the workmen are entitled for regularization of their services with all attendant benefits from the date of termination of their services? It is admitted case of the parties that both of the workmen worked as a casual labour for different periods. It is the claim of the workmen that they have worked for more than 120 days and were accordingly entitled to the status of temporary railway servants. Their juniors were given the benefit of temporary status, whereas, their case was not considered, resulting in the Industrial Disputes. Management of Indian Railways has opposed the contention of the workmen. It is contended by the management that none of the workman has completed 240 days of work with the management in any of the preceding year preceding to the date of their termination, hence, none of them is entitled for any protection of any provision of the Industrial Disputes Act. It is also contended by the management that the rules relating to 120 days of work are not applicable in the case of the workmen.

During arguments learned counsel for the workmen referred the relevant rules and submitted that both of the workmen have completed 120 days of work with the management. In spite of having the vacancies, they were not considered for the regularization of the services, whereas, even juniors to them have being regularized and are working with the management of Railways. Learned counsel for the workmen has also referred two lists by which the services of co-workers were regularized and in list no. 2, the name of both of the workmen was included for regularization, but reasons known to the department, their services were not regularized. It was further submitted by the learned counsel for the workmen that the seniority list was maintained in the register according to law, but to prevent the disclosure of the mischief committed by the management in violating the seniority list, the concern

register was scraped against the provisions of law. Learned Counsel for the workmen has relied upon the law laid down by Hon'ble the Apex Court of India in JT 1992(2) SC 459, Union of India and others Vs. Basant Lal and others. It was the case relating to the Railway department in which Hon'ble the Apex Court has given the benefit of temporary status to all those workmen who had completed 120 days of work with the management of Railways as per the Indian Railway Establishment Manual.

Learned counsel for the management has challenged the very nature of the references by stating that regularization of the services of the workmen cannot be considered by this Tribunal in view of the Secretary, State of Karnataka & others Vs. Uma Devi and others J.T. 2006 (4), SC, 420. Learned counsel for the management has also submitted that this Tribunal cannot consider the claim of the workmen who have worked temporarily for a specific period. As soon as that specific period was over their services were automatically terminated and no notice or retrenchment compensation was required. It is further submitted by learned counsel for the management that none of the workmen has completed 240 days of work and the rules of the department, if have different provisions then the Industrial Disputes Act, cannot be looked into by this Tribunal. As none of the workmen has completed 240 days of work they are not entitled for any relief, in view of learned counsel for the management.

This Tribunal-cum-Labour Court has been constituted for specific purposes. This is the Tribunal-cum-Labour Court which is constituted for the purpose of giving effect to the provisions of the beneficiary legislation, the Industrial Disputes Act. The main object for instituting the Tribunal-cum-Labour Court is to protect and regulation the services conditions and to prevent the infringement of any right of the workmen under the Industrial Disputes Act. Certain parameters are mentioned in the Industrial Disputes Act to regulate the services and work of the workmen working in any establishment. If some additional parameters are given in the rules of the department, it cannot be said that those rules can affect the very jurisdiction of this Tribunal-cum-Labour Court. Jurisdiction to any adjudicatory body is conferred by the legislation and not by the rules of any particular department (administrative act). If the argument of learned counsel for the management that this Tribunal has no jurisdiction to looked into the rules of department regarding 120 working days of casual labour is believed and conceded, it will resulted into the failure of very scheme for which the Industrial Disputes Act came into existence. It was not the intention of the legislation that any rules of the department can affect the jurisdiction of any adjudicatory body conferred by the legislation. Certainly there is no force in the contention of the learned counsel for the management that the workmen who had worked for 120 days with the management cannot be considered by this

Tribunal-cum-Labour Court for protection of their rights. The Industrial Disputes Act, empowers this tribunal to look into the issue whether the department has complied with the rules and regulations which regulates its business ?

Learned counsel for the management has also contended that the matter of regularization of services of the workmen cannot be considered by this Tribunal. Learned counsel for the management has referred and relied upon number of case laws which are as follows:—

- (1) 2007(1), Supreme Court Cases (L&S)346, Gangadhar Pillai Vs. Seimens Ltd.
- (2) 2006(3), SCT 67, National Fertilizers Ltd. and others Vs. Somvir Singh
- (3) 2004(4) SCT 523 Raj. District Animal Husbandary Officer, Bundi Vs. Judge Labour Court, Kota.
- (4) 2006 LLR 552 Allahabad, High Court Lokesh Mehta Vs. S.K. Jha., Assistant General Manager of State Bank of Paitala.
- (5) 2002(2) SCT 190, National Dairy Research Institute, Karnal Vs. Gopal Chand and others.

I have gone through all the case laws referred and relied upon by learned counsel for the management. The principle laid down (ratio of judgments) in all the cases referred are not applicable in the instant cases because of change of facts and circumstances. In all the above mentioned case laws the issues of termination of services on completion of 240 days of work and regarding the appointment of workmen against the rules of the department were considered. It is not the claim of the workmen in the instant references. The legality of initial appointment has not been challenged by the management. The procedure adopted by the management for engaging these two workmen along with other two co-workers as daily waged worker has not also been challenged. It is not the case of any party, nor there is even iota of evidence that initial engagement of workmen as daily waged worker was bad in law. So, the question of regularization of the services of the workmen has to be considered and discussed by this Tribunal on the issue whether the right of the workmen for regularization of their services was infringed by any act of the department of Railways against the provisions of Indian Railway Establishment Manual which regulate the business of management regarding the casual workers and in affording them the temporary status. If any right of the workmen, which was protected by the rules of the department contain in the Indian Railway Establishment Manual had been violated by the management, this Tribunal has jurisdiction to redress the violation.

Thus, the issue left before this Tribunal is whether the management of Railways has violated any rules regulating its business as contained in Indian Railways

Establishment Manual. The relevant rules are available on page no. 15 and 16 of the Manual, which reads as under:

2005. Entitlements and Privileges admissible to Casual Labour who are treated as temporary (i.e. given temporary status) after the completion of 120 days or 360 days of continuous employment (as the case may be)—

(a) Casual labour treated as temporary are entitled to the rights and benefits admissible to temporary railway servants as laid down in Chapter XXIII of this Manual. The rights and privileges admissible to such labour also include the benefit of D&A Rules. However, their service prior to absorption in temporary/permanent/regular cadre after the required selection/screening will not count for the purpose of seniority and the date of their regular appointment after screening/selection shall determine their seniority vis-a-vis other regular/temporary employees. This is, however, subject to the provision that if the seniority of certain individual employees has already been determined in any other manner, either in pursuance of judicial decisions or otherwise, the seniority so determined shall not be altered.

Casual labour including Project casual labour shall be eligible to count only half the period of service rendered by them after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption, as qualifying service for the purpose of pensionary benefits. This benefit will be admissible, only after their absorption in regular employment. Such casual labour, who have attained temporary status, will also be entitled to carry forward the leave at their credit to new post on absorption in regular service. Daily rated casual labour will not be entitled to these benefits.

(b) Such casual labour who acquire temporary status, will not, however, be brought on to the permanent or regular establishment or treated as in regular employment on Railways until and unless they are selected through regular Selection Board for Group D Posts in the manner laid down from time to time. Subject to such order as the railway board may issue from time to time, and subject to such exceptions and conditions like appointment on compassionate grounds, quotas for handicapped and Ex-servicemen etc. as may be specified in these orders they will have a prior claim over others to recruitment on a regular basis and they will be considered for regular employment without having to go through employment exchanges. Such of them who join as casual labour before attaining the age of 28 years should be allowed relaxation of the maximum age limit prescribed for group D posts to the extent of their total service which may be either continuous or in broken periods.

(c) No temporary posts shall be created to accommodate such casual labour, who acquire temporary status, for the conferment of attendant benefits like regular

scale of pay, increment etc. After absorption in regular employment, half of the service rendered after attaining temporary status by such persons before regular absorption against a regular/temporary/permanent post, will qualify for pensionary benefits, subject to the conditions prescribed in Railway Boards' letter No. E (NG) II/78/CL/12, dated 14-10-80. [Letter No. E(NG) II/85/CL/6, dated 28-11-86 in the case of project casual labourer].

(d) Casual labour who have acquired temporary status and have put in three years continuous service should be treated at par with temporary railway servants for purpose of festival advance/Flood Advance on the same conditions as are applicable to temporary railway servants for grant of such advance provided they furnish two sureties from permanent railway employees.

(e) Casual labour engaged on works, who attain temporary status on completion of 120 days continuous employment on the same type of work, should be treated as temporary employees for the purpose of hospital leave in terms of Rule 554-R-I (1985 Edition).

A casual labour who has attained temporary status and has been paid regular scale of pay, when re-engaged, after having been discharged earlier on completion of work or for non-availability of further productive work, may be started on the pay laid down by him. (This shall be effective from 2nd October, 1980).

Rule 2006 which is available on page no. 16 is also relevant for observation of casual labour in regular vacancies which reads as under:—

2006. Absorption of casual labour in regular vacancies.— Absorption of casual labour in regular Group D employment may be considered in accordance with instructions issued by the Railway Board from time to time. Such absorption is, however, not automatic but is subject, inter-alia, to availability of vacancies and suitability and eligibility of individual-casual labour and rules regarding seniority unit method of absorption etc. decided by the Railway Administration.

(ii) (a) Casual workmen for summer season shall be eligible for temporary status on completion of 120 days of continuous employment.

(b) For this purpose, various spells of engagement as casual workman may be aggregated provided the gap between two spells of employment has been caused due to season being over and/or there being no work for them in such establishment provided further that if a person engaged in the previous years is given an opportunity to work in the same hot weather establishment in the subsequent year but he fails to avail of that opportunity, he will have to start afresh in the event of his being so engaged again in future seasons. These provisions are effective from the summer season of 1985. [E(NG)II/83/CL/117 dt. 25-1-85].

(iii) As long as it is established that a casual labour has been enrolled within the prescribed age limit, relaxation in upper age limit at the time of actual absorption should be automatic and guided by this factor. In old cases where the age limit was not observed. Relaxation of age should be considered sympathetically. The DRMs may exercise such powers to grant relaxation in age limit.

Combined reading of both of these rules provides that any workmen who had worked for 120 days with the management of railways has a right to get the temporary status from the railway department subject to the rules of seniority maintained by the department. The method and manner of calculation of 120 days is also given in rules 2005 and 2006. Rule 2006 II/B, specifically mentioned how to calculate these 120 days. It means, if any casual worker has worked continuously for several years on specific job for a particular purpose the entire period he worked during these successive years shall be counted and if he worked 120 days, he has right to get the temporary status. The act of the management shows that they have initially try to protect this right of the workmen. But reasons known, to the management, the right of the workmen was violated. 'Vide letter no. 146/MED/II/Staff/PT-I(P-B), dated 10-1-97 the services of 61 casual workers were regularized on the basis of the register which was said to be scrapped by the management. Undoubtedly, the number of working days which both of the workmen have claimed, shows that they were juniors to all the 61 workmen whose services were regularized vide above letter. Both of the workmen have also provided the letter of the department No. 196-MED/II/Staff PT-I/2BB, dated 28-10-98. It is the list of 6 workmen whose services were to be regularized by the department against 6 vacancies. This letter which is marked as Ex. W 3, is regarding filling up the vacancies of sanitary/safaiwala in the Indian Railways on the basis of live operative labour register of Ferozpur Division. This letter clearly shows that as per the operating live casual labour register the 6 casual labourers whose name have been included in this letter were considered for regularization on the basis of their seniority and option. But reasons known to the department, the services of these workmen were not regularized and the register containing the particulars of the seniority of the workmen was scrapped by the railway department. There is no rule to scrap the register containing the particulars of seniority. As per the evidence adduced by the witness of the management Shri Virender Kumar MW 1, it is clear that the management has acted illegally in scraping the seniority register. MW1 stated as under:

"At present we are not having any vacancy. I am not having any casual labourer register from 1980—1989. Department has scraped the register during the pendency of this case. During the period of 1980—89, department regularized number of workmen. These workers were regularized on the

basis of same register which has been scrapped. It is not possible for me to file/produce the register which has been scrapped."

The letter of the department regarding scrapping the register is also on record which shows that the management has scrapped the register in 'view of the some irregularities in maintaining it. Para no. 4 of the letter dated 17-8-2004 is as follows :

"In view of such glaring omissions, it would not be possible to operate the register available or to give any cognizance to such register any further. It has therefore been decided to scrap the register and not to give any cognizance to it. The decision in this regard has already been conveyed to both the recognized unions *vide* this office letter of even no. dated 15-7-2004."

It shows that this register was scrapped during the pendency of both of these references. This register was scrapped on the ground, of certain omissions. In my view, when there are some omissions or irregularities in maintaining the register, those irregularities are to be cured by the management. The rules does not permit any authority to scrap the register. The act of the management regarding scrapping the register against the rules of the department proved that management has acted illegally in matter of regularization of the services of the daily waged workers. There is clear proof that as per register, which was scrapped thereafter, both of the workmen were considered for regularization against 6 vacancies as per seniority and option but the services of the workmen were not regularized and the vacancies were filled in as well without considering the seniority list. The relevant register was scrapped. There was no seniority list otherwise than the register. On what basis those 6 vacancies were filled in is unanswered.

The witness of the management has admitted during the cross examination that management is ready to provide the services to the workmen on availability of post, but at present no vacancies are available. When the vacancies were available they were filled in illegally by the management and to escape from the illegal acts, the seniority register was also scrapped illegally and now again a whimsical statement was made by the witness that the management is ready to give the work to the workers subject to the availability of the post. What prevented the management to regularize the services of the workmen, when vacancies were available ? The management started the proceedings for regularization and their names were considered for regularization. Ex. MW 3 in Mahinder Pal's file, I.D. No. 29/95, proved that the name of both of the workmen were considered for regularization on their option as per their seniority but both of the workmen were not regularized and to escape from the mischief committed by the management in the year 1998, the register containing the particulars of the seniority of the daily wagers was

illegally scrapped during the pendency of these references. Thus, there was a gross violation of rights of both of the workmen in not considering them for regularization (conferring temporary status) of their services as per the rules contained in Indian Railways Establishment Manual. The management of railways has acted illegally in superseding the right of both of the workmen in conferring them the temporary status.

Thus, as contended by learned counsel for the management that the issue of the regularization of the services is not open for discussion for this Tribunal in view of the law laid down in Uma Devi's case (*supra*), I am of the view that the law laid down in Uma Devi's case (*supra*) is also not applicable in the present references because the initial engagement as daily waged worker of both of these workmen was as per rules of the railway department and their right to temporary status (regularization of the service) was infringed by illegal act of the management. The management, as stated earlier, scrapped the seniority register illegally to prevent the disclosure of mischief. Accordingly, both of the workmen are entitled for the protection of their rights to regularization (conferring temporary status) of their services. Both of the references are accordingly answered. Department of Railway is directed to regularize the services (conferring temporary status) of both of the workmen within one month from, the date of the publication of this award.

In both of these references, there is a gross violation of rules by the management. The seniority list was violated and to prevent the disclosure of mischief committed in violating the seniority list, the seniority register maintained by the department was illegally scrapped. It is nothing but fraud with the department and the judicial forum. The Industrial Tribunal-cum-Labour Court, as this register was scrapped while both of the references were pending adjudication and the same was required in both of these references in evidence. Undisputedly one junior of workmen has been conferred the temporary status under the order of the Administrative Tribunal. Accordingly, considering the gross violation of the rights of these workmen, I am of the view that pay and seniority of the workmen should also be protected. The management is further directed to calculate the service benefits as per the letter Ex. W3 No. 196/MED/11/Staff/PT-II/P-B), dated 28-10-98 and provide the entire peculiar and other services benefits to the workmen within one month alongwith their regularization of their services (conferring temporary status) from the date of publication of this award.

The references are disposed of accordingly. Let the Central Government be informed for publication of award and, thereafter, file be consigned.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2009

का.आ. 1381.—औद्योगिक विवाद अधिनियम, 1947 (1947 को 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 104/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-2009 को प्राप्त हुआ था।

[सं. एल-40012/55/2004-आईआर(डी.यू.)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 28th April, 2009

S.O. 1381.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 104/2004) of the Central Government Industrial Tribunal-cum-Labour Court Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workman, which was received by the Central Government on 28-4-2009.

[No. L-40012/55/2004-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

PRESENT

N. K. Purohit, Presiding Officer

I.D. No. 104/2004

Ref. No. L-40012/55/2004-IR(DU) dated: 5-10-2004

BETWEEN

Sh. Mankesh Singh
S/o Sh. Ramnayank Singh,
Village Mahivia Kunwar,
Distt. Basti.

AND

1. The Telecom District Manager
Telecom Deptt. BSNL
Bahraich-271865.

2. The Chief General Manager,
Telecommunication, East Lucknow/The Principal General
Manager,
Pee Kay Bhawan,
Lucknow-226001

AWARD

13-04-2009

1. By Order No. L-40012/55/2004-IR(DU) dated 5-10-2004 the Central Government in the Ministry of Labour,

New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sh. Mankesh Singh S/o Sh. Ramnayank Singh, Village Mahivia Kunwar, Distt. Basti and the Telecom District Manager, Telecom Deptt., BSNL, Bahraich and the Chief General Manager, Telecommunication, East, Lucknow/The Principal General Manager, Pee Kay Bhawan, Lucknow for adjudication.

2. The reference under adjudication is :

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bahraich in terminating the services of Sh. Mankesh Singh S/o Shri Ram Nayank Singh, Daily Labour w.e.f. 31-7-2001 is legal and justified ? If not, to what relief the workman is entitled ?”

3. The case of the workman in brief is that the workman was engaged by the management of BSNL, in August, 1998 as a daily wages casual labourer (Class IV post) in serious exigency of departmental work and since then he was working on the said post and has worked for more than 240 days in the preceding years. The workman has alleged that the management of the BSNL has orally terminated his services w.e.f. 31-07-2001 without any valid reason in absolutely illegal, arbitrary, malafied and discriminatory manner; without affording any opportunity of hearing to the workman. The workman has further stated that in absence of regular appointments, the telecom department has been engaging daily wages casual laborers from time to time to meet the exigency of the work. It is alleged by the workman that he has not been given temporary status even after being recommended for the same, whereas the Department has granted temporary status and consequential benefits to similarly situated daily rated casual labourers w.r.t. Memo No. I 17/Ch II/TDM BRH/Casual Labour/II dated 18-7-2000 of Department of Telecommunications, office of the Telecom District Manager, Bahraich. The workman has also alleged that the management of BSNL has violated various provisions of the Industrial Disputes Act, 1947 i.e. Section 25N for non-conduction of any inquiry against him or service of any charge-sheet, as well as for non-payment of any notice pay or retrenchment compensation, Section 25G for retaining and continuing juniors in service; and Section 25H for engaging new persons without affording any opportunity to the workman for employment. Thus, the workman has prayed that the management of BSNL be directed to consider the case of the workman, to take him back in the service with back wages, to provide him temporary consequential benefits and to provide him bonus.

4. The management of the BSNL, in its written statement, has disputed the claim of the workman and has submitted that it never engaged the workman in any

capacity in August 1998 or subsequently, hence, there arise no question of having completed 240 days of service or alleged oral termination of the services of the workman or of violation of any of the provisions of the Industrial Disputes Act, 1947 at all. Regarding engagement of the workman on daily wages the management has mentioned that there was a complete ban on engagement of fresh Casual Labourers/Daily Wagers in the Department w.e.f. 12-06-1998. The management of BSNL has submitted that earlier the Casual Labourers were engaged on muster roll, but consequent to ban on engagement of Casual Labourers/Daily Wagers w.e.f. June 1998 no fresh labourers has been engaged on muster roll and also, the labourers, who were earlier working on muster roll and were covered under grant of temporary status and regularization scheme, have been granted temporary status. The case of the workman does not fall within that category because he was never engaged by the management in any capacity altogether. Thus, the management has prayed that the claim of the workman be rejected being incorrect and misconceived since he was never engaged or appointed in the management of BSNL in any capacity.

5. The workman has filed rejoinder whereby it has only reiterated his averments in the statement of claim and has not introduced any new fact.

6. The workman has filed photocopies of certain documents, less any appointment order, with his statement of claim, in support of his case whereas the management has not filed any documents with written statement, although it has disputed the authenticity of the documents filed by the workman. The workman has examined himself in support of his averments made in the statement of claim and was cross-examined by the opposite party. The management on the other hand filed affidavit of Shri Ram Charan, DE in support of their case but the workman failed to cross-examine him inspite of several opportunity being provided to him; accordingly the case proceeded ex-parte against the workman and the date for argument was fixed. The management submitted its written argument apart from oral submission whereas the workman once again did not turn up either for oral submission or to file its written argument.

7. Heard representative of the opposite party only and perused evidence on record.

8. The learned representative on behalf of the management has contended that the workman was never engaged as daily wages casual labourer in the department, therefore, there was no question of completing 240 days' regular service. He has further contended that there was complete ban on engagement of casual labourers w.e.f. 12-06-1998, moreover, the SDE was not empowered to engage casual labourers. He has also contended that Annexure-II is absolutely false and fabricated.

9. The workman Mankesh Singh has examined himself as witness in support of this claim that he had worked for more than 240 days in preceding twelve months from the date of his alleged disengagement, i.e. 31-07-2001. He has stated that he was engaged as casual daily wager by Shri A.K.B. Sahani SDO on 15-04-1997, but he was disengaged on 31-07-2001 without assigning any reason. He has worked as daily wager from 15-04-1997 to 31-07-2001. He has also stated that he was initially paid Rs. 1000/- per month, thereafter, Rs. 1200/- per month and thereafter Rs. 1500/- per month as salary and payment was used to be made on ACG 17 voucher. He has further stated that the person who were working with him on daily wages have been granted temporary status. In support of his statement he had produced following documents:

- (i) Photocopy of letter dated 13-6-2001 of SDE, Nanpara regarding regularization of casual labourers—left out cases, with the name of the workman in the enclosed list at serial No. 01, mentioning his date of engagement 15-04-97 (Annexure-II).
- (ii) Photocopy of Memo No. E-17/Ch-II/TDM BRH/Casual Labour/II, dated 18-07-2000 regarding grant of temporary status to 14 workmen (Annexure-III).
- (iii) Photocopy of award in I.D. No. 24/98 of this Tribunal (Annexure-IV).
- (iv) Photocopy of letter dated 03-07-2002 regarding regularization of casual labourers—left out case, with list of 139 workmen, less name of the workman Siya Ram (Annexure-V).

10. In rebuttal, the opposite party filed affidavit of Shri Ram Charan, Divisional Engineer in support of its case but the workman did not turn up for his cross-examination though ample opportunities were given to him. The Divisional Engineer in its affidavit who has stated that the workman was neither appointed by the opposite party as class IV nor he was engaged as casual daily wager. No order has been passed for engagement of the workman by the competent authority of the department. He has further stated that there is complete ban on the engagement of fresh casual labourer in the department w.e.f. 12-6-1988. The SDE was not competent to engaged any daily wager without approval of the competent authority. He has alleged that documents produced by the workman are not genuine documents and the SDE Mihinpurwa in order to give some undue benefit to his kith and kin has prepared some bogus documents showing engagement of the workman and other persons as having worked as daily wage/casual labourers whereas he was not competent to do so. The workman is stranger to the department.

11. In the light of the aforesaid rival statements of both the sides I have scanned the documents produced

by the workman. Annexure-II is the photo copy of a letter from SDE, Telecom, Nanpara to the TDM, Bahraich enclosing a list of the casual labourer. Name of the workman is mentioned and the date of his engagement has been shown as 15-04-1997, but column No. 4, 5 & 6 are blank. The original letter is neither produced nor summoned and its date and file reference is not mentioned therein. Annexure-III is letter dated 18-7-2002 wherein 14 other daily rated casual worker have been granted temporary status w.e.f. 12-7-1999. Annexure-IV is the copy of the award dated 23-11-2000 passed by this Tribunal in I.D. No. 24/98, but the facts were different. In the said industrial dispute it was an admitted fact by the opposite party that the concerned workman had worked for more than 240 days. Annexure-V is photocopy of letter of the Dy. G.M. addressed to Asstt. Director General, BSNL, Delhi regarding information about the regularization of casual labourers left out, enclosing a list of such workers, which is not legible.

12. The management has disputed the genuineness of the above documents and the management witness. The workman has neither produced nor summoned original documents.

13. Moreover, from the perusal of aforesaid documents it is not evident that the workman had worked from 15-04-1997 to 31-07-2001. In Annexure-II only the date of engagement is mentioned. Other documents are also not relevant to prove this fact that the workman had actually worked as casual labourers for more than 240 days in the preceding 12 months from the date of his disengagement.

14. Admittedly no appointment letter was issued and no post was ever advertised for the appointment. There is no evidence of the workman that SDE was competent to engage daily wage. He has not produced any voucher or attendance register or any other documentary evidence to prove this fact that Rs. 1500/- per month as salary for the period mentioned in his statement.

15. It is well settled that if a party challenges the legality of order the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the termination order and to prove the termination order was illegal but the workman did not produce any other documentary evidence with the result that there is no material in rebuttal of the management evidence. It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim has been denied by the management; therefore, it was for the workman to lead evidence to show that he had in fact worked up to 240 days in the year preceding his alleged termination. In (2002) 3 SCC 25 Range

Forest Officer vs. S.T. Hadimani Hon'ble Apex Court has observed as under :

"It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that can not be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside."

15. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in 2006 (108) FLR R.M. Yellatti & Asstt. Executive Engineer as follow :

"It is clear that the provisions of the evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that more affidavits or self serving statements made by the claimant/workman will no suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman not be the ground for the tribunal to draw an adverse against the management."

16. In the present case the workman has stated that he has worked continuously for 240 days, but has not produced any original documents in support of his oral evidence. The photocopy of Annexure-V is not legible. Moreover, photocopies of the documents Annexure-III, IV & V are not pertaining to the fact that the workman had

worked for more than 240 days. The column No. 3, 4 & 5 of the list enclosed with the letter dated 13-6-2001, Annexure-II, are blank. Only date of engagement of the workman has been shown as 15-04-1997, but period of working is not mentioned. Merely pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work for 240 days in a year was on the workman but he has failed to discharge the above burden. There is no reliable material for recording findings that the workman had worked more than 240 days in the preceding year from the date of his alleged termination and the alleged unjust or illegal order of termination was passed by the management.

17. Accordingly, the reference is adjudicated against the workman Mankesh Singh and he is not entitled to any relief.

18. Award as above.

Lucknow

N. K. PUROHIT, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2009

का.आ. 1382.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 91/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-04-2009 को प्राप्त हुआ था।

[सं. एल-40012/45/2004-आई आर (डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 28th April, 2009

S.O. 1382.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.91/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, No-1, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workmen, which was received by the Central Government on 28-4-2009.

[No. L-40012/45/2004-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, LUCKNOW

Present :

N. K. Purohit, Presiding Officer

I.D. No. 91/2004

Ref. No. L-40012/45/2004-IR(DU) dated: 05-10-2004

BETWEEN

Sh. Siya Ram
S/o Sh. Bhuseli Prasad Maurya
Village and PO Tazpur Post Nanpara
Bahraich-271865

AND

1. The Telecom District Manager
Telecom Deptt. BSNL
Bahraich
2. The Chief General Manager,
Telecommunication, East, Lucknow/The Principal
General Manager
Pee Kay Bhawan
Lucknow-226001

AWARD

9-4-2009

1. By order No. L-40012/45/2004-IR(DU) dated: 05-10-2004 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sh. Siya Ram, S/o Sh. Bhuseli Prasad Maurya, Vill. & PO Tazpur Post Nanpara, Bahraich and the Telecom District Manager, Telecom Deptt. BSNL, Bahraich & the Chief General Manager, Telecommunication, East, Lucknow/The Principal General Manager, Pee Kay Bhawan, Lucknow for adjudication.

2. The reference under adjudication is :

“Whether the action of the management of Bharat Sanchar Nigam Limited, Bahraich in terminating the services of Sh. Siya Ram S/o Shri Bhuseli Maurya, Daily Wager w.e.f. 13-06-2001 is legal and justified? If not, to what relief the workman is entitled?”

3. The case of the workman in brief is that the workman was engaged by the management of BSNL, in August, 1998 as a daily wages casual labourer (Class IV post) in serious exigency of departmental work and since then he was working on the said post and has worked for more than 240 days in the preceding years. The workman has alleged that the management of the BSNL has orally terminated his services w.e.f. 31-07-2001, though the date of termination of his services is mentioned to be 13-06-2001 in the order or reference under adjudication, without any valid reason in absolutely illegal, arbitrary, mala fide and discriminatory manner; without affording any opportunity of hearing to the workman. The workman has further stated that in absence of regular appointments, the telecom department has been engaging daily wages casual laborers from time to time to meet the exigency of the work. It is alleged by the workman that he has not been given temporary status even after being recommended

for the same, whereas the Department has granted temporary status and consequential benefits to similarly situated daily rated casual labourers w.r.t. Memo No. I 17/Ch II/TDM BRH/Casual Labour/II dated 18-07-2000 of Department of Telecommunications, Office of the Telecom District Manager, Bahraich. The workman has also alleged that the management of BSNL has violated various provisions of the Industrial Disputes Act, 1947 i.e. Section 25N for non-conduction of any inquiry against him or service of any charge sheet, as well as for non-payment of any notice pay or retrenchment compensation, Section 25G for retaining and continuing juniors in service; and Section 25 H for engaging new persons without affording any opportunity to the workman for employment. Thus, the workman has prayed that the management of BSNL be directed to consider the case of the workman, to take him back in the service with back wages, to provide him temporary status with consequential benefits and to provide him bonus.

3. The management of the BSNL, in its written statement, has disputed the claim of the workman and has submitted that it never engaged the workman in any capacity in the August, 1998 or subsequently, hence, there arise no question of having completed 240 days of service or alleged oral termination of the services of the workman or of violation of any of the provisions of the Industrial Disputes Act, 1947 at all. Regarding engagement of the workman on daily wages the management has mentioned that there was a complete ban on engagement of fresh Casual Labourers/Daily Wagers in the Department w.e.f. 12-06-1998. The management of BSNL has submitted that earlier the Casual Labours were engaged on muster roll, but consequent to ban on engagement of Casual Labours/Daily Wagers w.e.f. June, 1998 no fresh labour has been engaged on muster roll and also, the labourers, who were earlier working on muster roll and were covered under grant of temporary status and regularization scheme, have been granted temporary status. The case of the workman does not fall within that category because he was never engaged by the management in any capacity altogether. Thus, the management has prayed that the claim of the workman be rejected being incorrect and misconceived since he was never engaged or appointed in the management of BSNL in any capacity.

4. The workman has filed rejoinder whereby it has only reiterated his averments in the statement of claim and has not introduced any new fact.

5. The workman has filed photocopies of certain documents, less any appointment order, with his statement of claim, in support of his case whereas the management has not filed any documents with written statement, although it has disputed the authenticity of the documents filed by the workman. The workman has examined itself in support of his averments made in the statement of claim and was cross-examined by the opposite party. The management on the other hand filed affidavit of Shri Ram

Charan, DE in support of their case and was cross-examined by the representative of the workman. The management submitted its written argument apart from oral submission whereas the workman did not turn up either for oral submission or to file its written argument.

6. Heard representative of the opposite party only and perused evidence on record.

7. The learned representative on behalf of the management has contended that the workman was never engaged as daily wages casual labourer in the department, therefore, there was no question of completing 240 days' regular service. He has further contended that there was complete ban on engagement of casual labourers w.e.f. 12-06-1998, moreover, the SDE was not empowered to engage casual labourer. He has also contended that Annexure-II is absolutely false and fabricated.

8. The workman Siya Ram has examined himself as witness support of this claim that he had worked for more than 240 days in preceding twelve months from the date of his alleged disengagement i.e. 01-08-2001. He has stated that he was engaged as casual daily wager by Shri Dukhanti Prasad, DSO on 01-01-1997, but he was disengaged on 01-08-2001 without assigning any reason. He has worked as casual daily wager from 01-01-1997 to 31-07-2001. He has also stated that he was paid Rs. 40/- per day and payment was used to be made on ACG 17 voucher. He has further stated that the person who were working with him on daily wages have been granted temporary status. In support of his statement he had produced following documents :

- (i) Photocopy of letter dated 13-6-2001 of SDE, Nanpara regarding regularization of casual labourers - left out cases, with the name of the workman in the enclosed list at serial No. 06, mentioning his date of engagement 01-10-97 (Annexure-II).
- (ii) Photocopy of Memo No. E-17/Ch-II/TDM BRH/Casual labourer/II dated 18-07-2000 regarding grant of Temporary status to 14 workmen (Annexure-III).
- (iii) Photocopy of award in I.D. No. 24/98 of this Tribunal (Annexure IV).
- (iv) Photocopy of letter dated 03-07-2002 regarding regularization of casual labourers left out case, with list of 139 workmen, less name of the workman Siya Ram (Annexure- V)

9. In rebuttal, the opposite party has examined Shri Ram Charan, Divisional Engineer as witness who has stated that the workman was neither appointed by the opposite party as class IV nor he was engaged as casual daily wager. No order has been passed for engagement of the workman by the competent authority of the department. He has further stated that there is complete ban on the

engagement of fresh casual labourer in the department w.e.f. 12-6-1988. The SDE was not competent to engage any daily wager without approval of the competent authority. He has alleged that documents produced by the workman are not genuine documents and the SDE Mihinpurwa in order to give some undue benefit to his kith & kin has prepared some bogus documents showing engagement of the workman and other persons as having worked as daily wage/casual labour whereas he was not competent to do so. The workman is stranger to the department.

10. In the light of the aforesaid rival statements of both the sides I have scanned the documents produced by the workman. Annexure-II is the photo copy of a letter from SDE, Telecom, Nanpara to the TDM, Bahraich enclosing a list of the casual labourers. Name of the workman is mentioned and the date of his engagement has been shown as 1-1-1997, but column Nos. 4, 5 and 6 are blank. The original letter is neither produced nor summoned and its date and file reference is not mentioned therein. Annexure-III is letter dated 18-7-2002 wherein 14 other daily rated casual workers have been granted temporary status w.e.f. 12-7-1999. Annexure-IV is the copy of the award dated 23-1-2000 passed by this Tribunal in I.D. No. 24/98, but the facts were different. In the said industrial dispute it was an admitted fact by the opposite party that the concerned workman had worked for more than 240 days. Annexure-V is photocopy of letter of the Dy. G.M. addressed to Asstt. Director General, BSNL, Delhi regarding information about the regularization of casual labourers left out, enclosing a list of such workers, which is not legible.

11. The management has disputed the genuineness of the above documents and the management witness Shri Ram Charan has alleged that above documents are not genuine. There is no cross-examination on this point from the workman side. The workman has neither produced nor summoned original documents.

12. Moreover, from the perusal of aforesaid documents it is not evident that the workman had worked from 1-1-1997 to 31-7-2001. In Annexure-II, only the date of engagement is mentioned. Other documents are also not relevant to prove this fact that the workman had actually worked as casual labourer for more than 240 days in the preceding 12 months from the date of his disengagement.

13. Admittedly, no appointment letter was issued and no post was ever advertised for the appointment. There is no evidence of the workman that SDE was competent to engage daily wager. He has not produced any voucher or attendance register or any other documentary evidence to prove this fact that Rs. 40 per day was paid to him as salary for the period mentioned in his statement.

14. It is well settled that if a party challenges the legality of order the burden lies upon him to prove illegality

of the order and if no evidence is produced the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the termination order and to prove the termination order was illegal but the workman did not produce any other documentary evidence with the result that there is no material in rebuttal of the management evidence. It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim has been denied by the management; therefore, it was for the workman to lead evidence to show that she had in fact worked up to 240 days in the year preceding his alleged termination. In (2002) 2 SCC 25 Range Forest Officer vs S.T. Hadimant Hon'ble Apex Court has observed as under:

"It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside."

15. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in 2006 (108) FLR R.M. Yellatti and Asstt. Executive Engineer as follows :

"It is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions, however, make it clear that more affidavits or self serving statements made by the claimant/workman will no suffice in the matter of discharge of the burden placed by law on the workman to prove

that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management."

16. In the present case the workman has stated that he has worked continuously for 240 days, but has not produced any original documents in support of his oral evidence. The photocopy of Annexure-V is not legible. Moreover, photocopies of the documents Annexures-III, IV and V are not pertaining to the fact that the workman had worked for more than 240 days. The column Nos. 3, 4 and 5 of the list enclosed with the letter dated 13-6-2001, Annexure-II, are blank. Only date of engagement of the workman has been shown as 1-1-1997, but period of working is not mentioned. Merely pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work for 240 days in a year was on the workman but he has failed to discharge the above burden. There is no reliable material for recording findings that the workman had worked more than 240 days in the preceding year from the date of his alleged termination and the alleged unjust or illegal order of termination was passed by the management.

17. Accordingly, the reference is adjudicated against the workman Siya Ram and he is not entitled to any relief.

18. Award as above.

Lucknow

Dated : 9-4-2009

N. K. PUROHIT, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2009

का.आ. 1383.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 91/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-2009 को प्राप्त हुआ था।

[सं. एल-40012/38/2004-आई आर (डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 28th April, 2009

S.O. 1383.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 91/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workmen, which was received by the Central Government on 28-4-2009.

[No. L-40012/38/2004-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

Shri N. K. Purohit, Presiding Officer

I.D. No. 91/2004

Ref. No. L-40012/38/2004-IR(DU) dated: 16-8-2004

BETWEEN

Sh. Radheyshyam Jaiswal,
S/o Sh. Ramlakhan Jaiswal,
Bawarchi Tola, Nanpara,
Bahraich

AND

1. The Chief General Manager,
Telecom, UP Circle,
Hazratganj,
Lucknow
2. The Telecom. District Manager,
Telecomm. Deptt. BSNL,
Bahraich

AWARD

15-4-2009

1. By order No. L-40012/38/2004-IR(DU) dated 16-8-2004 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sh. Radheyshyam Jaiswal, S/o Sh. Ramlakhan Jaiswal, Bawarchi Tola, Nanpara, Bahraich and the Chief General Manager, Telecom, UP Circle, Hazratganj, Lucknow and the Telecom District Manager, Telecom Deptt. BSNL, Bahraich for adjudication.

2. The reference under adjudication is :

"Whether the action of the management of BSNL, Bahraich in terminating the services of Sh. Radheyshyam Jaiswal, S/o Shri Ramlakhan Jaiswal, Daily Wager w.e.f. 31-7-2001 is legal and justified? If not, to what relief the workman is entitled?"

3. The case of the workman in brief is that the workman was engaged by the management of BSNL, in January, 1997 as a daily wages casual labourer (Class IV post) in serious exigency of departmental work and since then he was working on the said post and has worked for more than 240 days in the preceding years. The workman has alleged that the management of the BSNL has orally terminated his services w.e.f. 31-7-2001, without any valid reason in absolutely illegal, arbitrary, malafide and discriminatory manner; without affording any opportunity of hearing to the workman. The workman has further stated that in absence of regular appointments, the telecom department has been engaging daily wages casual

labourers from time to time to meet the exigency of the work. It is alleged by the workman that he has not been given temporary status even after being recommended for the same, whereas the Department has granted temporary status and consequential benefits to similarly situated daily rated casual labourers w.r.t. Memo No. I 17/Ch II/TDM BRH/Casual Labour/II dated 18-07-2000 of Department of Telecommunications, Office of the Telecom District Manager, Bahraich. The workman has also alleged that the management of BSNL has violated various provisions of the Industrial Disputes Act, 1947 i.e. Section 25N for non-conduction of any inquiry against him or service of any charge sheet, as well as for non-payment of any notice pay or retrenchment compensation, Section 25G for retaining and continuing juniors in service; and section 25H for engaging new persons without affording any opportunity to the workman for employment. Thus, the workman has prayed that the management of BSNL be directed to consider the case of the workman, to take him back in the service with back wages, to provide him temporary status with consequential benefits and to provide him bonus.

3. The management of the BSNL, in its written statement, has disputed the claim of the workman and has submitted that it never engaged the workman in any capacity in the year 1998 or subsequently, hence, there arise no question of having completed 240 days of service or alleged oral termination of the services of the workman or of violation of any of the provisions of the Industrial Disputes Act, 1947 at all. Regarding engagement of the workman on daily wages the management has mentioned that there was a complete ban on engagement of fresh Casual Labourers/Daily Wagers in the Department w.e.f. 12-06-1998. The management of BSNL has submitted that earlier the Casual Labours were engaged on muster roll, but consequent to ban on engagement of Casual Labours/Daily Wagers w.e.f. June, 1998 no fresh labour has been engaged on muster roll and also, the laborers, who were earlier working on muster roll and were covered under grant of temporary status and regularization scheme, have been granted temporary status. The case of the workman does not fall within that category because he was never engaged by the management in any capacity altogether. Thus, the management has prayed that the claim of the workman be rejected being incorrect and misconceived since he was never engaged or appointed in the management of BSNL in any capacity.

4. The workman has filed rejoinder whereby it has only reiterated his averments in the statement of claim and has not introduced any new fact.

5. The workman has filed photocopies of certain documents, less any appointment order, with his statement of claim, in support of his case whereas the management has not filed any documents with written statement, although it has disputed the authenticity of the documents filed by the workman. The workman has examined itself in

support of his averments made in the statement of claim and was put to questions by the Court due to absence of the opposite party in the date fixed. The management on the other hand filed affidavit of Shri Ram Charan, DE in support of their case but the workman failed to cross-examine him in spite of several opportunity being provided to him; accordingly the case proceeded *ex-parte* against the workman and the date for argument was fixed. The management submitted its written argument apart from oral submission whereas the workman did not turn up either for oral submission or to file its written argument.

6. Heard representative of the opposite party only and perused evidence on record.

7. The learned representative on behalf of the management has contended that the workman was never engaged as daily wages casual labourer in the department, therefore, there was no question of completing 240 days' regular service. He has further contended that there was complete ban on engagement of casual labourers w.e.f. 12-06-1998, moreover, the SDE was not empowered to engage casual labour. He has also contended that Annexure-II is absolutely false and fabricated.

8. The workman Radhyeshyam has examined himself as witness in support of this claim that he had worked for more than 240 days in preceding twelve months from the date of his alleged disengagement. i.e. 31-07-2001. He has stated that he was engaged as daily wager on 01-10-1997 and was disengaged on 31-07-2001 without assigning any reason. He has worked as daily wager from 01-10-1997 to 31-07-2001. He has also stated that he was paid Rs. 1300 per month as salary and payment was used to be made on ACG 17 voucher. He has further stated that the person who were working with him on daily wages have been granted temporary status. In support of his statement he had produced following documents:

- (i) Photocopy of letter dated 13-6-2001 of SDE, Nanpara regarding regularization of casual labourers - left out cases, with the name of the workman in the enclosed list at Serial No. 07, mentioning his date of engagement 01-10-97 (Annexure-II).
- (ii) Photocopy of Memo No. E-17/Ch-II/TDM BRH/Casual labour/II dated 18-07-2000 regarding grant of Temporary status to 14 workmen (Annexure-III).
- (iii) Photocopy of letter dated 08-06-2001 of SDE, Mihinpurva regarding regularization of casual labourers, without name of workman (Annexure-IV).
- (iv) Photocopy of award in I.D. No. 24/98 of this Tribunal (Annexure V).
- (v) Photocopy of letter dated 03-07-2002 regarding regularization of casual labourers left out case, with list of 139 workmen, less name of the workman Siya Ram (Annexure-VI).

9. In rebuttal, the opposite party filed affidavit of Shri Ram Charan, Divisional Engineer in support of its case but the workman did not turn up for his cross-examination though ample opportunities were given to him. The Divisional Engineer in its affidavit has stated that the workman was neither appointed by the opposite party as class IV nor he was engaged as casual daily wager. No order has been passed for engagement of the workman by the competent authority of the department. He has further stated that there is complete ban on the engagement of fresh casual labourer in the department w.e.f. 12-6-1988. The SDE was not competent to engaged any daily wager without approval of the competent authority. He has alleged that documents produced by the workman are not genuine documents and the SDE Mihinpurva in Order to give source undue benefit to his kith and kin has prepared some bogus documents showing engagement of the workman and other persons as having worked as daily wage/casual labour whereas he was not competent to do so. The workman is stranger to the department.

10. In the light of the aforesaid rival statements of both the sides I have scanned the documents produced by the workman. Annexure-II is the photocopy of a letter from SDE, Telecom, Nanpara to the TDM, Bahraich enclosing a list of the casual labourer. Name of the workman is mentioned and the date of his engagement has been shown as 01-10-1997, but column Nos. 4, 5 and 6 are blank. The original letter is neither produced nor summoned and its date and file reference is not mentioned therein. Annexure-III is letter date 18-7-2002 wherein 14 other daily rated casual worker have been granted temporary status w.e.f. 12-7-1999. Annexure-IV is the photocopy of a letter from SDE, Telecom, Mihinpurva to the TDM, Bahraich enclosing a list of the casual labourer. Name of the workman is not mentioned in the list enclosed. Annexure-V is the copy of the award dated 23-11-2000 passed by this Tribunal in I.D. No. 24/98, but the facts were different. In the said industrial dispute it was an admitted fact by the opposite party that the concerned workman had worked for more than 240 days. Annexure-VI is photocopy of letter of the Dy. G.M. addressed to Asstt. Director General, BSNL, Delhi regarding information about the regularization of casual labourers left out, enclosing a list of such workers, which is not legible.

11. The management has disputed the genuineness of the above documents and the management witness. The workman has neither produced nor summoned original documents.

12. Moreover, from the perusal of aforesaid documents it is not evident that the workman had worked from 01-10-1997 to 31-07-2001. Other documents are also not relevant to prove this fact that the workman had actually worked as casual labour for more than 240 days in the preceding 12 months from the date of his disengagement.

13. Admittedly, no appointment letter was issued and no post was ever advertised for the appointment. There is no evidence of the workman that SDE was competent to engage daily wager. He has not produced any voucher or attendance register or any other documentary evidence to prove this fact that Rs. 1300 per month as salary for the period mentioned in his statement.

14. It is well settled that if a party challenges the legality of order the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the termination order and to prove the termination order was illegal. It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim has been denied by the management; therefore, it was for the workman to lead evidence to show that she had in fact worked up to 240 days in the year preceding his alleged termination. In (2002) 3 SCC 25 Range Forest Officer Vs. S.T. Hadimani Hon'ble Apex Court has observed as under:

"It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that can not be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside."

15. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in 2006 (108) FLR R.M. Yellatti & Asstt. Executive Engineer as follow :

"It is clear that the provisions of the evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if

any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that more affidavits or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management."

16. In the present case the workman has stated that he has worked continuously for 240 days, but has not produced any original documents in support of his oral evidence. The photocopy of Annexure-VI is not legible. Moreover, photocopies of the documents Annexure-III, IV & V are not pertaining to the fact that the workman had worked continuously for more than 240 days. preceding twelve months from the date of his alleged termination. The column No.3, 4 & 5 of the list enclosed with the letter dated 13-6-2001, Annexure-II, are blank. Only date of engagement of the workman has been shown as 01-10-1997, but period of working is not mentioned. Merely pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work for 240 days in a year was on the workman but he has failed to discharge the above burden. There is no reliable material for recording findings that the workman had worked more than 240 days in the preceding year from the date of his alleged termination and the alleged unjust or illegal order of termination was passed by the management.

17. According, the reference is adjudicated against the workman Radhyeshyam and he is not entitled to any relief.

18. Award as above.

Lucknow
15-4-2009

N. K. PUROHIT, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2009

का.आ. 1384.-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 123/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-2009 को प्राप्त हुआ था।

[सं. एल-40012/84/2004-आई.आर. (डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 28th April, 2009

S.O. 1384.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.123/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workman, which was received by the Central Government on 28-4-2009.

[No. L-40012/84/2004-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, LUCKNOW

Present : N.K. Purohit, Presiding Officer

I.D. No.123/2004

Ref. No. L-40012/84/2004-IR (DU) dated: 29-10-2004

BETWEEN

Sh. Samar Bahadur,
S/o Sh. Beni Madav Patel,
Village Bawukapura (Raipur),
Post Bhawari, Tehsil Kunda,
Partapgarh (U.P.)

AND

1. The Telecom District Manager,
Telecom Deptt. BSNL,
Bahraich.
2. The Chief General Manager,
Telecommunication, East, Lucknow
The Principal General Manager,
Pee Kay Bhawan,
Lucknow 226001.

AWARD

1. By Order No. L-40012/84/2004-IR (DU) dated: 29-10-2004 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sh. Samar Bahadur, S/o Sh. Beni Madav Patel, Village Bawukapura (Raipur), Post Bhawari, Tehsil Kunda, Partapgarh (U.P.) and the Telecom District Manager, Telecom Deptt. BSNL, Bahraich & the Chief General Manager, Telecommunication, East, Lucknow/The Principal General Manager, Pee Kay Bhawan, Lucknow for adjudication.

2. The reference under adjudication is:

"Whether the action of the management of BSNL, Bahraich in terminating the services of Sh. Samar Bahadur S/o Sh. Beni Madhav Patel, daily wages w.e.f. 31-7-2001 is legal and justified? If not, to what relief the workman is entitled?"

3. The case of the workman in brief is that the workman was engaged by the management of BSNL, in August, 1998 as a daily wages casual labourer (Class IV Post) in serious exigency of departmental work and since then he was working on the said post and has worked for more than 240 days in the preceding years. The workman has alleged that the management of the BSNL has orally terminated his services w.e.f. 31-7-2001 without any valid reason in absolutely illegal, arbitrary, malafied and discriminatory manner; without affording any opportunity of hearing to the workman. The workman has further stated that in absence of regular appointments, the telecom department has been engaging daily wages casual labourers from time to time to meet the exigency of the work. It is alleged by the workman that he has not been given temporary status even after being recommended for the same, whereas the Department has granted temporary status and consequential benefits to similarly situated daily rated casual labourers w.r.t. Memo No. 17/Ch II/TDM BRH/Casual Labour/II dated 18-7-2000 of Department of Telecommunications, Office of the Telecom District Manager, Bahraich. The workman has also alleged that the management of BSNL has violated various provisions of the Industrial Disputes Act, 1947 i.e. Section 25 N for non-conduction of any inquiry against him or service of any charge sheet, as well as for non-payment of any notice pay or retrenchment compensation, Section 25 G for retaining and continuing juniors in service; and section 25 H for engaging new persons without affording any opportunity to the workman for employment. Thus, the workman has prayed that the management of BSNL be directed to consider the case of the workman, to take him back in service with back wages, to provide him temporary status with consequential benefits and to provide him bonus.

4. The management of the BSNL, in its written statement, has disputed the claim of the workman and has submitted that it never engaged the workman in any capacity in the August, 1998 or subsequently, hence, there arise no question of having completed 240 days of service or alleged oral termination of the services of the workman or of violation of any of the provisions of the Industrial Disputes Act, 1947 at all. The management has mentioned that it has Service Rules and recruitment Rules and all appointments are made strictly in accordance with those Rules and the workman is liable to put strict proof in support of his claim i.e. to submit his appointment letter, details of payments and other relevant documents in support of his claim. In this regard the management has pointed out that there was a complete ban on engagement of fresh Casual Labourers/Daily Wagers in the Department w.e.f. 12-6-1998. The management of BSNL has submitted that earlier the Casual Labours were engaged on muster roll, but consequent to ban on engagement of Casual Labours/Daily Wagers w.e.f. June, 1998 no fresh labour has been engaged on muster roll and also, the labourers, who were earlier working on muster roll and were covered under grant of

temporary status and regularization scheme, have been granted temporary status. The case of the workman does not fall within that category because he was never engaged by the management in any capacity altogether. Thus, the management has prayed that the claim of the workman be rejected being incorrect and misconceived since he was never engaged or appointed in the management of BSNL in any capacity.

5. The workman has filed rejoinder whereby it has only reiterated his averments in the statement of claim and has not introduced any new fact.

6. The workman has filed photocopies of certain documents, less any appointment order, with his statement of claim, in support of his case whereas the management has not filed any documents with written statement, although it has filed certain documents with the affidavit of its witness Shri Ram Charan, DE, in support of its case. The workman has examined it self in support of his averments made in the statement of claim and was cross-examined by the opposite party; whereas the workman failed to cross-examine the management witness in spite of several opportunity accordingly the case proceeded ex-parte against the workman and the date for argument was fixed. The management submitted its written argument apart from oral submission whereas the workman once again did not turn up either for oral submission or to file its written argument.

7. Heard representative of the opposite party only and perused evidence on record.

8. The learned representative on behalf of the management has contended that the workman was never engaged as daily wages casual labourer in the department, therefore, there was no question of completing 240 day's regular service. He has further contended that there was complete ban on engagement of casual labourers w.e.f. 12-6-1998, moreover, the SDE was not empowered to engage casual labour. He has also contended that Annexure-II is absolutely false and fabricated.

9. The workman Samar Bhadur has examined himself as witness in support of this claim that he had worked for more than 240 days in preceding twelve months from the date of his alleged disengagement, i.e. 1-8-2001. He has stated that he was engaged as casual labour by Shri Dukhanti Prasad, SDE on 2-4-1998, but he was disengaged on 1-8-2001 without assigning any reason. He has worked as casual daily wager from 2-4-1998 to 31-7-2001. He has also stated that he was paid Rs. 1200 per month and payment was used to be made on ACG 17 voucher. He has further stated that the person who were working with him on daily wages have been granted temporary status. In support of his statement he had produced following documents:

(i) Photocopy of letter dated 13-6-2001 of SDE, Nanpara regarding regularization of casual

labourers - left out cases, with the name of the workman in the enclosed list at serial No.14, mentioning his date of engagement 2-4-98 (Annexure-II).

(ii) Photocopy of Memo No. E-17/Ch-II/TDM BRH/ Casual labour/II dated 18-7-2000 regarding grant of Temporary status to 14 workmen (Annexure-III).

(iii) Photocopy of award in I.D. No. 24/98 of this Tribunal (Annexure-IV).

(iv) Photocopy of letter dated 3-7-2002 regarding regularization of casual labourers left out case, with list of 139 workmen, less name of the workman Siya Ram (Annexure-V).

10. In rebuttal, the opposite party has examined Shri Ram Charan, Divisional Engineer as witness who has stated that the workman was neither appointed by the opposite party as class-IV nor he was engaged as casual daily wager. No order has been passed for engagement of the workman by the competent authority of the department. He has further stated that there is complete ban on the engagement of fresh casual labourer in the department w.e.f. 12-6-1988. The SDE was not competent to engaged any daily wager without approval of the competent authority. He has alleged that documents produced by the workman are not genuine documents and the SDE Mihinpurwa in order to give some undue benefit to his Kith & kin has prepared some bogus documents showing engagement of the workman and other persons as having worked as daily wage/casual labour whereas he was not competent to do so. The workman is stranger to the department.

11. In the light of the aforesaid rival statements of both the sides, I have scanned the documents produced by the workman. Annexure-II is the photocopy of a letter from SDE, Telecom, Nanpara to the TDM, Bahraich enclosing a list of the casual labourer. Name of the workman is mentioned and the date of his engagement has been shown as 2-4-1998, but column No. 4, 5 & 6 are blank. The original letter is neither produced nor summoned and its date & file reference is not mentioned therein. Annexure-III is letter dated 18-7-2002 wherein 14 other daily rated casual worker have been granted temporary status w.e.f. 12-7-1999. Annexure-IV is the copy of the award dated 23-11-2000 passed by this Tribunal in I.D. No. 24/98, but the facts were different. In the said industrial dispute it was an admitted fact by the opposite party that the concerned workman had worked for more that 240 days. Annexure-V is photocopy of letter of the Dy. G. M. addressed to Asstt. Director General, BSNL, Delhi regarding information about the regularization of casual labourers left out, enclosing a list of such workers, which is not legible.

12. The management has disputed the genuineness of the above documents and the management witness Shri Ram Charan has alleged that above documents are not

genuine. There is no cross-examination on this point from the workman side. The workman has neither produced nor summoned original documents.

13. Moreover, from the perusal of aforesaid documents it is not evident that the workman had worked from 2-4-1998 to 31-7-2001. In Annexure-II only date of engagement is mentioned. Other document are also not relevant to prove this fact that the workman had actually worked as casual labour for more than 240 days in the preceding 12 months from the date of his disengagement.

14. Admittedly no appointment letter was issued and no post was ever advertised for the appointment. There is no evidence of the workman that SDE was competent to engage casual labour. He has not produced any voucher or attendance register or any other documentary evidence to prove this fact that Rs.1200 per month was paid to him as salary for the period mentioned in his statement.

15. It is well settled that if a party challenges the legality of order the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the termination order and to prove the termination order was illegal. It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim has been denied by the management; therefore, it was for the workman to lead evidence to show that he had in fact worked up to 240 days in the year preceding his alleged termination. In (2002) 3 SCC 25 Range Forest Officer vs S.T. Hadimani Hon'ble Apex Court has observed as under :—

“It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that can not be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside.”

16. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in 2006 (108) FLR R.M. Yellatti & Asstt. Executive Engineer as follow:

“It is clear that the provisions of the evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a

given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that more affidavits or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere then production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management."

17. In the present case the workman has stated that he has worked continuously for 240 days, but has not produced any original documents in support of his oral evidence. The photocopy of Annexure-V is not legible. Moreover, photocopies of the documents Annexure-III, IV & V are not pertaining to the fact that the workman had worked continuously for more than 240 days preceding twelve months from the date of his alleged termination. The column Nos. 3, 4 & 5 of the list enclosed with the letter dated 13-6-2001, Annexure-II, are blank. Only date of engagement of the workman has been shown as 2-4-1998, but period of working is not mentioned. Merely pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work for 240 days in a year was on the workman but he has failed to discharge the above burden. There is no reliable material for recording findings that the workman had worked more than 240 days in the preceding year from the date of his alleged termination and the alleged unjust or illegal order of termination was passed by the management.

18. Accordingly, the reference is adjudicated against the workman Samar Bahadur and he is not entitled to any relief.

19. Award as above.

Lucknow
15-4-2009

N.K. PUROHIT, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2009

का.आ. 1385.-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 86/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-2009 को प्राप्त हुआ था।

[सं. एल-40012/31/2004-आई.आर.(डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 28th April, 2009

S.O. 1385.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.86/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workmen, which was received by the Central Government on 28-4-2009.

[No. L-40012/31/2004-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-LUCKNOW

Present : N.K. Purohit, Presiding Officer

I.D. No.86/2004

Ref. No. L-40012/31/2004-IR (DU) dated: 16-8-2004

Between

Sh. Amaranth Saroj,
S/o Sh. Chhagur Prasad,
Village Majhan Colony PO Lohia Nagar,
Tehsil Nanpara,
Distt. Bahraich.

AND

1. The Chief General Manager,
Telecom UP Circle,
Hazratganj
Lucknow
2. The Telecom District Manager,
Telecom Deptt. BSNL,
Bahraich.

AWARD

13-4-2009

1. By order No. L-40012/31/2004-IR (DU) dated: 16-8-2004 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sh. Amaranth Saroj

S/o Shri Chhagur Prasad, Village Majhan Colony PO Lohia Nagar, Tehsil Nanpara, District Bahraich and the Chief General Manager, Telecom, UP Circle, Hazratganj, Lucknow & the Telecom District Manager, Telecom Deptt. BSNL, Bahraich for adjudication.

2. The reference under adjudication is:

“Whether the action of the management of BSNL, Bahraich in terminating the services of Sh. Amar Nath Saroj S/o Sh. Chhagur Prasad daily wager w.e.f. 8-10-2001 is legal and justified? If not, to what relief the workman is entitled?”

3. The case of the workman in brief is that the workman was engaged by the management of BSNL, in January, 1997 as a daily wages casual labourer (Class IV Post) in serious exigency of departmental work and since then he was working on the said post and has worked for more than 240 days in the preceding years. The workman has alleged that the management of the BSNL has orally terminated his services w.e.f. 8-10-2001 without any valid reason in absolutely illegal, arbitrary, malafied and discriminatory manner; without affording any opportunity of hearing to the workman. The workman has further stated that in absence of regular appointments, the telecom department has been engaging daily wages casual labourers from time to time to meet the exigency of the work. It is alleged by the workman that he has not been given temporary status even after being recommended for the same, whereas the Department has granted temporary status and consequential benefits to similarly situated daily rated casual labourers w.r.t. Memo No. 117/Ch II/TDM BRH/Casual Labour/II dated 18-7-2000 of Department of Telecommunications, Office of the Telecom District Manager, Bahraich. The workman has also alleged that the management of BSNL has violated various provisions of the Industrial Disputes Act, 1947 i.e. Section 25 N for non-conduction of any inquiry against him or service of any charge sheet, as well as for non-payment of any notice pay or retrenchment compensation, Section 25 G for retaining and continuing juniors in service; and section 25 H for engaging new persons without affording any opportunity to the workman for employment. Thus, the workman has prayed that the management of BSNL be directed to consider the case of the workman, to take him back in service with back wages, to provide him temporary status with consequential benefits and to provide him bonus.

4. The management of the BSNL, in its written statement, has disputed the claim of the workman and has submitted that it never engaged the workman in any capacity in the August, 1998 or subsequently, hence, there arise no question of having completed 240 days of service or alleged oral termination of the services of the workman or of violation of any of the provisions of the Industrial Disputes Act, 1947 at all. Regarding engagement of the workman on daily wages the management has mentioned

that there was a complete ban on engagement of fresh Casual Labourers/Daily Wagers in the Department w.e.f. 12-6-1998. The management of BSNL has submitted that earlier the Casual Labours were engaged on muster roll, but consequent to ban on engagement of Casual Labours/Daily Wagers w.e.f. June, 1998 no fresh labour has been engaged on muster roll and also, the labourers, who were earlier working on muster roll and were covered under grant of temporary status and regularization scheme, have been granted temporary status. The case of the workman does not fall within that category because he was never engaged by the management in any capacity altogether. Thus, the management has prayed that the claim of the workman be rejected being incorrect and misconceived since he was never engaged or appointed in the management of BSNL in any capacity.

5. The workman has filed rejoinder whereby it has only reiterated his averments in the statement of claim and has not introduced any new fact.

6. The workman has filed photocopies of certain documents, less any appointment order, with his statement of claim, in support of his case whereas the management has not filed any documents with written statement, although it has disputed the authenticity of the documents filed by the workman. The workman has examined it self in support of his averments made in the statement of claim and was put to questions by the Court due to absence of the opposite party on the date fixed. The management on the other hand filed affidavit of Shri Ram Charan, DE in support of their case but the workman failed to cross-examine him in spite of several opportunity being provided to him; accordingly the case proceeded ex- parte against the workman and the date for argument was fixed. The management submitted its written argument apart from oral submission whereas the workman once again did not turn up either for oral submission or to file its written argument.

7. Heard representative of the opposite party only and perused evidence on record.

8. The learned representative on behalf of the management has contended that the workman was never engaged as daily wages casual labourer in the department, therefore, there was no question of completing 240 day's regular service. He has further contended that there was complete ban on engagement of casual labourers w.e.f. 12-6-1998, moreover, the SDE was not empowered to engage casual labour. He has also contended that annexure-II is absolutely false and fabricated.

9. The workman Amar Nath Saroj has examined himself as witness in support of this claim that he had worked for more than 240 days in preceding twelve months from the date of his alleged disengagement i.e. 8-10-2001. He has stated that he was engaged as daily wager by

Shri Dukhanti Prasad, SDO in January, 1997 but he was disengaged on 31-7-2001 without assigning any reason. He has worked as daily wager from January, 1997 to 8-10-2001. He has also stated that he was paid Rs. 1500 per month as salary and payment was used to be made on ACG 17 voucher. He has further stated that the person who were working with him on daily wages have been granted temporary status. In support of his statement he had produced following documents:

- (i) Photocopy of letter dated 13-6-2001 of SDE, Nanpara regarding regularization of casual labourers - left out cases, without name of the workman in the enclosed list though his date of engagement is mentioned as January, 1997 in the enclosed proforma (Annexure-II).
- (ii) Photocopy of notice issued to the parties concerned by the ALC (C) for conciliation proceedings before him (Annexure-III).
- (iii) Failure of Conciliation report dated 30-2-2004 of ALC (C) in respect of Conciliation proceedings (Annexure-IV).
- (iv) Photocopy of Memo No. E-17/Ch-II/TDM BRH/Casual labour/II dated 18-7-2000 regarding grant of Temporary Status to 14 workmen (Annexure-V).
- (v) Photocopy of letter dated 8-6-2001 of SDE, Mihin purwa regarding regularization of casual labourers, with the name of workman in the enclosed list at serial No.1, mentioning his date of engagement as 1-1-1997 (Annexure-VI).
- (vi) Photocopy of award in I.D. No. 24/98 of this Tribunal (Annexure-VII).
- (vii) Photocopy of letter dated 3-7-2002 regarding regularization of casual labourers left out case, with list of 139 workmen, less name of the workman Amar Nath Saroj (Annexure-VIII).

9. In rebuttal, the opposite party has examined Shri Ram Charan, Divisional Engineer in support of its case but the workman did not turn up for his cross-examination though ample opportunities were given to him. The Divisional Engineer in its affidavit who has stated that the workman was neither appointed by the opposite party as class IV nor he was engaged as casual daily wager. No order has been passed for engagement of the workman by the competent authority of the department. He has further stated that there is complete ban on the engagement of fresh casual labourer in the department w.e.f. 12-6-1988. The SDE was not competent to engaged any daily wager without approval of the competent authority. He has alleged that documents produced by the workman are not genuine documents and the SDE Mihinpurwa in order to give some undue benefit to his kith & kin has prepared some bogus documents showing engagement of the workman and other

persons as having worked as daily wage/casual labour whereas he was not competent to do so. The workman is stranger to the department.

10. In the light of the aforesaid rival statements of both the sides, I have scanned the documents produced by the workman. Annexure-II is the photo copy of a letter from SDE, Telecom, Nanpara to the TDM, Bahraich enclosing a list of the casual labourer. Name of the workman and his date of his engagement is not mentioned in the list enclosed, therefore, said list is not relevant. Though name of the workman is given the revised proforma said to be enclosed to the letter, but it is evident from the perusal of said letter that it was not enclosed with it. Only list of fifteen casual labourers was sent. Moreover, if the workman had worked for days mentioned in the proforma, then his name should have been mentioned in list forwarded along with Annexure-II. Absence of the name of the workman in the list, and absence of any reference in the Annexure-II letter renders its genuineness doubtful. Annexure-III is notice issued to the parties concerned by ALC (C) for conciliation proceeding before him. Annexure-IV is failure of conciliation report dated 30-2-2004 of ALC (C) in respect of conciliation proceedings. Annexure-V is letter dated 18-7-2002 wherein 14 others daily rated casual worker have been granted temporary status w.e.f. 12-7-1999. Annexure-VI is the photocopy of a letter from SDE, Telecom, Mihin purwa to the TDM, Bahraich enclosing a list of the casual labourer. Name of the workman is mentioned and the date of his engagement has been shown as 1-1-1997. The original letter is neither produced nor summoned and its date & file reference is not mentioned therein. Annexure-VII the copy of the award dated 23-11-2000 passed by this Tribunal in I.D. No. 24/98, but the facts were different. In the said industrial dispute it was an admitted fact by the opposite party that the concerned workman had worked for more than 240 days. Annexure-VIII is photocopy of letter of the Dy. G. M. addressed to Asstt. Director General, BSNL, Delhi regarding information about the regularization of casual labourers left out, enclosing a list of such workers, which is not legible.

11. The management has disputed the genuineness of the above documents and the management witness. The workman has neither produced nor summoned original documents.

12. Moreover, from the perusal of aforesaid documents it is not evident that the workman had worked from 1-1-1997 to 8-10-2001. Other document are also not relevant to prove this fact that the workman had actually worked as casual labour for more than 240 days in the preceding 12 months from the date of his disengagement.

13. Admittedly no appointment letter was issued and no post was ever advertised for the appointment. There is no evidence of the workman that SDE was competent to engage daily wager. He has not produced any voucher or

attendance register or any other documentary evidence to prove this fact that Rs.1500 per month as salary for the period mentioned in his statement.

14. It is well settled that if a party challenges the legality of order the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the termination order and to prove the termination order was illegal. It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim has been denied by the management; therefore, it was for the workman to lead evidence to show that he had in fact worked up to 240 days in the year preceding his alleged termination. In (2002) 3 SCC 25 Range Forest Officer vs. S.T. Hadimani Hon'ble Apex Court has observed as under :

“It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside.”

15. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in 2006 (108) FLR R.M. Yellatti & Asstt. Executive Engineer as follow :

“It is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions, however, make it clear that more affidavits or self serving

statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls *per se* without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management.”

16. In the present case the workman has stated that he has worked continuously for 240 days, but has not produced any original documents in support of his oral evidence. The photocopy of Annexure-VIII is not legible. Moreover, photocopies of the documents Annexures-II, III, IV & V are not pertaining to the fact that the workman had worked continuously for more than 240 days preceding twelve months from the date of his alleged termination. Only date of engagement of the workman has been shown as 1-1-1997 in the Annexure-VI, but period of actual working is not mentioned. Merely pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work for 240 days in a year was on the workman but he has failed to discharge the above burden. There is no reliable material for recording findings that the workman had worked more than 240 days in the preceding year from the date of his alleged termination and the alleged unjust or illegal order of termination was passed by the management.

17. Accordingly, the reference is adjudicated against the workman Amar Nath Saroj and he is not entitled to any relief.

18. Award as above.

Lucknow
13-4-2009

N.K. PUROHIT, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2009

का.आ. 1386.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बोर्ड ऑफ सेकण्डरी एजुकेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 3/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-2009 को प्राप्त हुआ था।

[सं. एल-42012/115/97-आई.आर.(डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 28th April, 2009

S.O. 1386.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 3/2007) of the Central Government Industrial Tribunal-cum-Labour

Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Board of Secondary Education and their workman, which was received by the Central Government on 28-4-2009.

[No. L-42012/115/97-IR (DU)]

SURENDRA SINGH, Desk Officer

**ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 15th April, 2009

Present : A.N. Janardanan, Presiding Officer

Industrial Dispute No. 3/2007

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Central Board of Secondary Education and their Workman].

BETWEEN

Sri K. Soundararajan Petitioner/I Party
Vs.

The Joint Secretary,
Central Board of Secondary Education,
Anna Nagar,
Chennai-40

Respondent/II
Party

APPEARANCE

For the Petitioner : M/s. Balan Haridas & Kamatchi
 Sundaesan

For the Management : Sri G. Nagarajan

AWARD

The Central Government, Ministry of Labour vide its Order No. L-42012/115/97-IR(DU) dated 8-1-2007 referred the following Industrial Dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is :

“Whether the action of the Management of the Central Board of Secondary Education, Chennai, in terminating the services of their workman Shri K. Soundararajan w.e.f. 30-1-1995 is legal and justified? If not, to what relief the workman is entitled to?”

2. Taking the reference on file as ID No. 3/2007, notices were issued to both sides who entered appearance through counsel and filed their Claim and Counter Statement as the case may be.

3. The contentions raised by the petitioner in the Claim Statement are as follows :

The petitioner joined as Peon in the Office of the Joint Secretary, Central Board of Secondary Education, Nungambakkam, Chennai on 5-8-1991, whereafter was transferred to the Respondent's office in 1994 on a monthly salary of Rs. 1,333. He has been working continuously and completed 240 days in a year. On 31-1-1995, his service was terminated without any valid reason and without notice of retrenchment or compensation violating principles of natural justice. The Industrial Dispute raised by him on 1-12-1995 before the Asstt. Labour Commissioner (C), Chennai was not accepted on file. Another one filed on 18-9-1996 was referred on the failure of conciliation. The Ministry of Labour having not referred the dispute, the petitioner moved before the High Court of Madras in WP 3870/2000 which by its letter dated 8-1-2007 referred the dispute to this Tribunal. The termination of his service is in violation of Section-25F of the ID Act. It is prayed that he be directed to be reinstated into service with continuity of service and other consequential benefits.

4. In the Counter Statement filed by the Respondent it is stated as follows :

The claim is not maintainable in law or on facts. The ID Act provisions are not applicable to CBSE, it being an educational institution. The petitioner is not a workman. As the petitioner himself admits in the Claim Statement, he was a Casual Labourer only. It is denied that he was paid salary of Rs. 1,333 per month and had been working continuously and completed 240 days in a year. He was employed only on daily wage basis when exigency arose. The period he worked are as follows :

Period		Total No. of Days
From	To	
5-8-1991	30-12-1991	148
1-1-1992	30-6-1992	182
16-8-1992	30-11-1992	107
1-1-1993	30-3-1993	90
1-5-1993	30-6-1993	61
1-8-1993	30-12-1993	153
1-1-1994	30-1-1994	31
1-3-1994	15-4-1994	47
1-5-1994	30-6-1994	61

There is no question of having to assign any reason or paying any compensation when his service was terminated. The High Court and Lok Adalat without going into the merits of the case directed the reference. It is prayed that the claim may be dismissed.

5. The Points for consideration are :

(i) Whether the action of terminating the services of the workman is legal and justified?

(ii) To what relief the workman is entitled?

Point No. 1

6. When the matter stood posted for enquiry at the instance of the Respondent the question of maintainability of the ID was sought to be heard as a Preliminary Issue. But thereafter the Respondent continued to be absent and unrepresented and therefore the matter was posted for final enquiry. During the several dates to which the ID stood posted the Respondent continued to be absent or un-represented and finally the Respondent is called absent and set-exparte. On the side of the petitioner, WW1 was examined and Ex.W1 to Ex. W10 were marked.

7. According to the petitioner examined as WW1, he joined the Respondent Institution on 5-8-1991 as Temporary Peon. His last drawn salary was Rs. 1,333. He worked till 1995 without break. Ex. W1 to Ex. W4 are his Appointment Orders. On 31-1-1995, he was terminated from service without any reason. During each year, he worked more than 240 days continuously. On the failure of conciliation, it is under an order of the High Court of Madras and the Legal Services Authority award that the Ministry of Labour and Employment referred the matter to this Tribunal. He claims regularization in service after reinstatement with backwages and all attendant benefits.

8. The Respondent remained absent and did not contest the case after filing the counter statement in which some contentions are raised including the allegation that the ID is not maintainable. The reasons alleged are manifold such as that the petitioner was not a regular employee as he himself having qualified his nature of appointment as Casual worker, that ID Act is not applicable to Central Board of Secondary Education (CBSE), it being an educational body, that the petitioner is not a workman, that the petitioner was paid monthly salary of Rs. 1,333 is denied or that he completed 240 days in an year is denied, that he was employed only on daily wages as and when exigency arose and that therefore a reasoned termination of service and with payment of compensation does not arise.

9. As against the case of the petitioner that he worked continuously for more than 240 days until he was terminated from service in 1995 without any notice specifying reason or payment of compensation and it is illegal the case of the Respondent is a negation of the same put into black and white by way of pleadings in the Counter Statement filed who also challenges the maintainability of the Industrial Dispute in this forum. Ex. W1 to Ex. W4 are the orders of Appointment of the petitioner as Peon. They relate upto the end of 1992. No further documents are produced by him to prove his prolonged service which he claims to have been terminated by 1995. Though there is no any documents produced by the petitioner to prove his prolonged service beyond the year 1992, his case is that he continued to be in service till 1995 working for more than 240 days in an year until 1995. This fact is proved by him by his sworn testimony before this Court as WW1. On

behalf of the Ex-parte Respondent this evidence does not stand shaken. Though the evidence brought about by the petitioner in the form of an Affidavit is apt to be capable of being construed as a self-serving piece of evidence, here in as much as the same is not controverted and the same is not the only piece of evidence to prove the case of the petitioner's entry into the service of the Respondent, the same is not be brushed aside as a piece of evidence to be rejected in its entirety.

10. The case of the Respondent enumerating a number of specific periods expressed in the Counter Statement suggestive is of certain definite periods during which alone the petitioner is alleged to have worked under them. The same remains only as a pleading not substantiated or explained by the Respondent. Even accepting the said case of Respondent, petitioner discernibly worked even upto the year 1994.

11. Ex. W6 produced by the petitioner shown that the petitioner had worked under the Respondent for more than 240 days each year preceding the year of his termination from service. Ex. W6 is the counter affidavit filed by the Respondent before the Asstt. Labour Commissioner, (C), Chennai. The Respondent has not substantiated that the ID is not maintainable, why the petitioner is not a workman and why the Respondent Institution is not subject to the ID jurisdiction. Mere statements without the same being substantiated by the law or facts or by any circumstances cannot be of any help to the Respondent. It is to be noted that pleading by itself is not proof. The oblivious disposition of a legal aspect on which an argument is canvassed by the Respondent is to be elucidated by the Respondent in order to succeed. It is true that law cannot be oblivious to what is obvious to others. Here in the absence of elucidation by the Respondent as to the exact legal position on which it relies the law cannot take care of itself and be obvious to the aspect to sustain the contention of Respondent challenging the various legal aspects against the petitioner. Here law has to be oblivious since the case of the Respondent in the pleading is not so obvious to the law. The nature of the contention of the Respondent that the petitioner being only a Casual Labourer, he is not entitled to retrenchment notice or retrenchment compensation, perse shows their illegal and unjust conduct in the petitioner having been terminated from service. In other words, the Respondent has no case that they gave him notice of termination assigning any reason or any compensation in lieu of notice or retrenchment compensation at all. Under Section-25(F) of the Industrial Disputes Act, the compliance with the above requisites is an obligatory condition for the termination of the workman. Therefore the action of the Respondent in having terminated the services of the petitioner sounds illegal, unjust and against the principles of natural justice from the very inception. Therefore, the same is liable to be set aside and the petitioner is to be reinstated in service with and all attendant benefits.

Point No. 2

12. In the result, the action of the Respondent in terminating the service of the petitioner is set aside. He will be reinstated into the service forthwith with all attendant benefits.

13. The question of regularization of service of the employee is left to the decision of the Respondent in accordance with the rules and procedure commensurate with the law.

14. The reference is accordingly answered in favour of the petitioner.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 15th April, 2009)

A.N. JANARDANAN, Presiding Officer

Witnesses Examined :-

For the I Party/Petitioner	:	None
For the II Party/Management	:	None

Documents Marked :-**On the petitioner's side**

Ex. No.	Date	Description
Ex.W1	30-9-1992	Appointment Order
Ex.W2	1-10-1992	Appointment Order
Ex.W3	30-10-1992	Appointment Order
Ex.W4	30-11-1992	Appointment Order
Ex.W5	12-9-1996	Lodge of Complaint before Regional Labour Commissioner (c) against termination
Ex.W6	21-3-1997	The Management's Counter
Ex.W7	21-3-1997	Reply filed by the petitioner
Ex.W8	26-8-1997	Conciliation failure report.
Ex.W9	Nil	Copy of the Writ Petition No. 3870/2000 with Affidavit
Ex.W10	9-12-2006	Recommendation of High Court through Lok Adalat directing the Ministry of Labour to refer the matter to this Tribunal.

On the Management's side

Ex. No.	Date	Description
	Nil	

नई दिल्ली, 28 अप्रैल, 2009

का.आ. 1387.-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ऑर्डनेन्स फैक्ट्री के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 7/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-2009 को प्राप्त हुआ था।

[सं. एल-14011/2/2008-आईआर(डीयू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 28th April, 2009

S.O. 1387.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 7/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Ordnance Factory and their workman, which was received by the Central Government on 28-4-2009.

[No. L-14011/2/2008-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 15th April, 2009

Present : A.N. Janardanan, Presiding Officer

Industrial Dispute No. 7/2009

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Ordnance Factory and their Workmen).

BETWEEN

The General Secretary, : Petitioner/I Party
Ordnance Factory Worker's
Progressive Union,
Ordnance Factory,
Thiruchirapalli-620016

Vs.

The General Manager, : II Party/Management
Ordnance Factory,
Ministry of Defence,
Thiruchirapalli-620016.

APPEARANCE

For the Petitioner	:	None
For the Management	:	None

AWARD

The Central Government, Ministry of Labour vide its Order No. L-14011/2/2008-IR(DU) dated 27-8-2008

referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether Ordnance Factory Thiruchirapalli Employee's Union's, Thiruchirapalli demand for setting Water Treatment Plant to supply pure drinking water to Factory and Estate by the Management of Ordnance Factory Thiruchirapalli is legal and justified? If yes, to what relief the workmen are entitled to?”

2. The reference was taken on file as ID 7/2009. Thereafter notices by RPAD were issued to both the parties. The Respondent was served notice but in spite of several adjournments given, he is called absent and has been set ex-parte.

3. The first petitioner Union by a purported letter no. OFWPU/KK/01/09 dated 20-1-2006 informed that on the date of appearance fixed on 19-1-2009, Union Office bearers could not attend and the next adjourned date is sought to be intimated to them. The same was received by post on 21-1-2009. It is evident that the Petitioner Union has been in receipt of the notice issued but has not attended this Tribunal on the day appointed or on any days thereafter numbering to 9 days to which dates the case stood posted from time to time.

4. The Respondent did not appear at all nor did it respond to the notice proved received by it in any manner. The Respondent is also therefore called absent and set-exparte.

5. Now as it is both the parties are absent and set exparte. The Petitioner Union was aware of the original posting date of this ID. When once he is given due notice of the date of the proceedings before this Tribunal, it is not again communicate to him the subsequent dates of this ID to which the same stands posted. He is to find out the next date of the proceeding and to appear then and there and partake in the proceedings. It is not incumbent on this Court to issue notice again and again. Therefore, the request of the Petitioner Union to intimate the future dates of the postings of the case cannot be countenanced.

6. Since the Petitioner Union continuously remained absent, he has been set ex-parte. No pleading or evidence has been let in by either of the parties by filing a Claim Statement/Counter Statement supported by relevant documents, list of reliance and witnesses. There is no evidence adduced by either side to prove their respective claims in the Industrial Dispute which was referred to this Tribunal.

7. In this case both the parties viz. the Petitioner Union and the Respondent are at equal fault. But the petitioner at least is shown to have intended to appear on some further intimation from this Tribunal but which was

not effected. Invoking a maxim the meaning of which is - “when both are at equal fault the condition of the defendant is better” a decision may be given in favour of the Respondent. In a situation of this kind the burden of proof lies on the petitioner. Burden of proof lies on the party who would fail if no evidence is adduced on either side. In other words burden lies on the party who wishes the Tribunal to believe in the existence of the legal claim sought to be granted. It is the petitioner who made the demand with the Respondent for setting water treatment plant to supply pure drinking water to factory and estate and the question referred is whether the said demand is legal and justified. Yet, discernibly the demand cannot be one unreasonable or far fetched which is only regarding supply of pure drinking water to the employees under the Respondent. For the purpose it is sought to get set a water treatment plant at the factory and estate by the Respondent/Management. Since there is nothing unusual in it, there is no reason why such a demand is to be disallowed. The Respondent has not placed anything for a contra view. The Petitioner Union has not entered appearance and prosecuted the matter. In as much as the Respondent/Management remained ex-parte from the very inception of the case in spite of having been duly served with notice, even without a debut I am of the considered view that they are not much against the demand of the Petitioner Union in the matter of setting up a water treatment plant at the factory and the estate premises of the Respondent. Therefore, I do not hesitate to hold that the demand of the Petitioner's Union to set up a water treatment plant for supply of pure drinking water to the factory and the estate by the Respondent/Management is only legal and justified. Therefore the Petitioner Union is entitled to an award to that effect.

8. Resultantly, the Respondent/Management is ordered to set up a water treatment plant for supply of pure drinking water to the factory and estate.

9. The reference is answered accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 15th April, 2009)

A.N. JANARDANAN, Presiding Officer

Witnesses Examined :—

For the I Party/Petitioner	:	None
For the II Party/Management	:	None

Documents Marked :—

From the petitioner's side

Ex. No.	Date	Description
Nil		

From the Management's side :—

Ex. No.	Date	Description
Nil		

नई दिल्ली, 28 अप्रैल, 2009

का.आ. 1388.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. वेल्ट्रॉन इंजीनियरिंग सर्विसेस, एम ई एस के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अरनाकुलम के पंचाट (संदर्भ संख्या 263/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-2009 को प्राप्त हुआ था।

[सं. एल-14011/6/2002-आई.आर.(डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 28th April, 2009

S.O. 1388.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.263/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Weltron Engineering Services, MES and their workmen, which was received by the Central Government on 28-4-2009.

[No. L-14011/6/2002-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

PRESENT: Shri. P.L. Norbert, B.A., LL.B., Presiding Officer
(Wednesday the 8th day of April, 2009/18th Chaitra 1931)

I.D. 263 of 2006

Workman/Union :

1. Sri. N.V. Joseph,
Nattayikkodath House,
Bhavana Parambu,
Thammanan P.O., Kochi - 682 032.
2. The General Secretary,
General Contract Workers Sangh,
7/79, Perandoor Road, Emakulam.

By Adv. T.C. Krishna.

Management :

M/s. Weltron Engineering Services,
MES, Mandakara Road,
Ayyappankavu, Kochi - 682 018.

By Adv. C.P. Saji.

This case coming up for hearing on 8-4-2009, this Tribunal-cum-Labour Court on the same day passed the following.

AWARD

This is a reference made under Section 10(1)(d) of Industrial Disputes Act claiming arrears of wages and bonus.

When the case came for evidence parties came to a settlement and filed a memo to that effect. In terms of the settlement Rs. 12,000 was paid to the workman by the management as full and final settlement of all claims.

In the result, an award is passed in terms of the memo of settlement. The memo will form part of the award.

The award will come into force one month after its publication in the official gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 8th day of April, 2009.

P. L. NORBERT, Presiding Officer

Appendix : Nil

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT**I.D. No: 263/06**

Weltron Engineering Services : Management
Vs.

N.V. Joseph : Workman

MEMO FILED BY THE WORKMAN

The subject matter of the above Industrial Dispute has been settled between the parties. Consequent to the settlement, I have received Rs. 12,000 (Rupees twelve thousand only) as full and final settlement of all my claim against the management.

Dated this the 8th day of April, 2009.

N. V. Joseph
Workman

Sd/
C. Anil Kumar,
Counsel for workman

नई दिल्ली, 28 अप्रैल, 2009

का.आ. 1389.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बोर्ड ऑफ सेकेण्डरी एजुकेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-1 चण्डीगढ़ के पंचाट (संदर्भ संख्या 153/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-2009 को प्राप्त हुआ था।

[सं. एल-42012/306/99-आई.आर.(डी.यू.)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 28th April, 2009

S.O. 1389.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 153/2000) of the Central Government Industrial Tribunal cum Labour Court No. I, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Central Board of Secondary Education and their workman, which was received by the Central Government on 28-4-2009.

[No. L-42012/306/99-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH**

Case No I.D. No. 153/2000

Ms. Arti D/o Shri Lajpat Rai, H.No. 253 I, Sector-20-C,
Chandigarh

...Applicant

Versus

The Regional Officer, Central Board of Secondary
Education, Sector-32-A, Chandigarh

...Respondents

APPEARANCES

For the Workman : Sri D.R. Sharma

For the Management: Sri Harsh Aggarwal

AWARD

Passed on : 15-4-2009

Government of India vide notification No. L-42012/306/99-IR(D.U.) dated 13-4-2000 referred the following industrial dispute for judicial adjudication to this Tribunal :—

“Whether the action of Regional Officer, CBSE, Chandigarh and the Assistant Secretary (Adm.II), CBSE, Delhi in terminating the services of Ms. Arti D/o Sh. Lajpat Rai w.e.f. 1-4-1999 is legal and justified ? If not, to what relief the workman is entitled ?”

On perusal of pleadings of parties, it is evidently clear that the main controversy before the Tribunal is regarding the relationship between the management of CBSE and the workman. The workman has prayed for his reinstatement on the ground that her services were terminated by the management without notice or retrenchment compensation against the provisions of Industrial Disputes Act. On the other hand, the management of CBSE has contended that it is not an industry and

alternatively the services of the workman were taken purely on contract.

I have gone through the pleadings of parties and the evidence adduced by them. I am not inclined to accept the contention of the workman that her services were terminated by the management of CBSE illegally without notice and retrenchment compensation against the provisions of I.D. Act. On the basis of the following grounds, I am reaching to the conclusion that the workman is not entitled to any relief.

(1) Admittedly, the workman was appointed on a contract for a specific term and on fixed wages. She was to be paid Rs. 2000 per month without any allowance as the fixed wages. The appointment was for a fixed term and as per the terms and conditions of the appointment letter, it was extendable.

(2) It was one of the term and condition of the contract providing the work to the workman that the workman shall not be entitled for regularization of the services and other such benefits on the basis of this contractual appointment

(3) From the evidence on record, it is evidently clear that the workman worked exclusively on the basis of this contract. She was paid wages as per terms and conditions of the contract and not otherwise.

(4) The contract was extended time to time. The last extended expired was upto 31-3-1999 and her services were terminated on 1-4-1999. It is admitted by the workman in her cross-examination that her earlier appointment letter was upto 31-3-1999 and her services were terminated on 1-4-1999. Accordingly, there was no occasion to permit Smt. Arti to continue the work. For the sake of argument, if it is considered that she worked for a day (1-4-99) after the contractual period expired, it cannot create any right to the workman to continue the work with the management.

(5) Neither, Smt. Arti was appointed as per the procedure laid in the rules and regulations of the CBSE for regular appointment against any substantial vacancy, nor she was paid wages as are paid to the regular workman. She rendered the services purely on contractual basis for fixed term and on expiry of the term on 31-3-1999, her services were terminated on 1-4-1999. The services of the workman automatically terminated on expiration of term of contract.

The management has raised another issue regarding the status of CBSE. It is contended by the management that CBSE is not an industry. The bases of this contention has been that CBSE is not producing the goods but conducting examinations. I am not inclined to accept the contention because in the definition of industry, it is not

only production of good but also the services rendered by any organization is to be looked into. The services are rendered by the management of CBSE for the public at large and for rendering the services assistance of the workman and other type of employees/officers is taken. Thus, as per the definition of the industry given in Bangalore Water Supply and Sewerage Board and others Vs., A.Rajappa, AIR 1978, SC 548, by 7Judges Bench of Hon'ble the Supreme Court, C.B.S.E. is an industry.

Thus, under such circumstances the management of CBSE was not obliged to give any notice or to pay retrenchment compensation as per the provisions of Industrial Disputes Act and the workman has been rightly terminated from the services. The workman is accordingly not entitled to any relief. Central Government be informed and thereafter, file be consigned.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 29 अप्रैल, 2009

का.आ.1390.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं बी.बी.एम. जी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 7/1998 को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-4-2009 को प्राप्त हुआ था।

[सं. एल-23012/10/1996-आईआर (सी. II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 29th April, 2009

S.O.1390.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 7/1998) of the Central Government Industrial Tribunal cum Labour Court No.I, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of. BBMB and their workmen, which was received by the Central Government on 29-4-2009.

[No. L-23012/10/1996-IR (C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-
I, CHANDIGARH**

Case No I.D. No. 7/98

Shri R.K. Singh Parmar, Secretary, Punjab INTUC, Qtr.
No. 35-G, Nangal Township, Distt. Ropar (Pb)-140124.

...Applicant

Versus

The Chief Engineer (Generation), Bhakra Beas Management Board, Nangal Township, Distt. Ropar (Pb)-140124.

...Respondent

APPEARANCES

For the Workman : Sri R. K. Singh

For the Management : Sri Rajinder Singh.

AWARD

Passed on : 20-4-2009

Government of India vide notification No. L-23012/10/96-IR (C-II), dated 30-12-97 referred the following industrial dispute for judicial adjudication to this Tribunal :—

“Whether the case of abandonment of a job of daily rated worker through absence from duty for more than 10 days, a show cause notice is required to be issued before striking off the name from the muster rolls ? If yes, to what relief the workman is entitled ?”

It is the principle of service jurisprudence applicable in Industrial Tribunals and Labour Courts that the Tribunal/Court, as the case may be, cannot travel beyond the scope of the reference. The reference referred is regarding the 10 days notice before striking off the name of any daily rated worker from the muster rolls. Thus, the main question before this Tribunal for adjudication is whether the management was bound to give 10 days notice before striking off the name of the workman on the ground of his absence from the work ?

I have gone through the pleadings of the parties and evidence adduced by them. In pleadings, the workman has also challenged the termination order on the ground that he has worked for more than 240 days in the preceding year from the date of his termination and his services were terminated without any notice or retrenchment compensation as required under the provisions of Industrial Disputes Act. Dispute regarding the seniority list is also raised by the workman and he has prayed for his reinstatement into the services with full back wages.

The management of respondent of BBMB has challenged the contention of the workman raised in a statement of claim by filing written statement. As stated earlier, that main question for determination is whether management of BBMB failed to give 10 days notice before striking off the name of the workman from the muster rolls of the daily rated workers? The other contentions like working of 240 days etc. are not to be considered by this Tribunal independently because these contentions are beyond the scope of the reference. Main issue is 10 days notice and rest of the issues are incidental thereto.

On the nature of reference the workman has stated that 10 days notice of termination is required under Certified

Standing Orders. The copy of the Certified Standing Orders has been filed. I have gone through the entire material including Certified Standing Orders filed and relied upon by the workman. I have also gone through the evidence of the parties oral and documentary.

Parties were also heard before reserving the file for award.

Before raising the industrial dispute regarding the claim of the workman the workman preferred to file a civil suit in the Court of Sub-Judge Anandpur Sahib which was dismissed after full trial. Thereafter, the workman also filed a writ petition in Pb. and Har. High Court, Chd. which was also dismissed with the direction to seek appropriate remedy in the Industrial Tribunal -cum-Labour Court as per the provisions of the Industrial Disputes Act.

On these facts, learned counsel for the management of BBMB has contended that the present reference is barred by principle of resjudicata. It is established law that principle of resjudicata is applicable in the proceedings before Industrial Tribunals-cum-Labour Court. The civil suit filed by the workman Ram Dass in the Court of Sub-Judge Anandpur Sahib was without jurisdiction. The condition for resjudicata is that the previous suit might have been disposed off by a Court of competent jurisdiction. Sub-Judge Anandpur Sahib was not the Court of competent jurisdiction as the jurisdiction of the civil court in such matters which originated under Industrial Disputes Act is barred. Likewise, Hon'ble Pb. and Har. High Court while dismissing the writ petition directed the petitioner to seek appropriate remedy before Industrial Tribunal. Thus, I am unable to accept the contention of the management of BBMB that this reference is barred by principle of resjudicata.

I have gone through all the Standing Orders relied and filed by the workman. There is no provision in any of the Standing Orders that in case of absence of the workman, working as daily waged worker, 10 days notice is required for striking off his name from the list of workers. There is a provision for 10 days notice to be given to retrenched workman before filling the vacancies. The language of Standing Order is very well clear that when any workman is retrenched by the department, it is the duty of the management to serve a 10 days notice on the retrenched workman before filling up the vacancies. If the retrenched workman is available for work, fresh appointment shall not be made. In this reference the situation is otherwise. The workman absented from the work and on his such absence, his name was striking out from the penal of daily rated workers as he abandoned the work. There is no provision in Standing Orders to give notice to such workman whose name has been strike off by the management on his abandonment of work. On perusal of the entire materials on record, it is evident that daily waged workers are engaged for a specific job in case of emergency. Generally,

as stated by the witness of the management in his affidavit, the work is employed by permanent employees of the management of BBMB and in case of emergency the daily rated workers are employed. If daily rated worker without any information absented from the duty, the management has got a right to strike off his name from the list and to get the work done by some other daily rated worker. Under such circumstances the cause of absence should also be seen. On perusal of the reference, pleadings and evidence, it is evident that it is not the dispute before this Tribunal that workman absented on some genuine cause. From the reference itself, it is clear that there is no confusion on striking off the name of the workman from the muster roll on his absence. The dispute is whether 10 days notice is required before striking off his name. In the Standing Orders filed and relied upon by the workman there is no such rule where 10 days notice is required for striking off the name of the workman who without any cause has abandoned the work.

It is true that where there are no provisions of law, the principle of justice equity and good conscious shall prevail. The principle of natural justice (right of hearing) also depends on facts and circumstances of each case. No fixed jacket formula can be adopted to judge the violation of the principle of natural justice. In case where the services of a workman is taken on an excecency of work and workman without any cause absented from work, the very purpose for his engagement is frustrated and the management cannot be supposed to wait for 10 days or some more days before engaging another workman at his place to complete the work of excecency. In such type of cases, considering the nature of work, nature of engagement and relevant rules, I am of the view that there has been no violation of principle of natural justice by striking off the name of the workman from the muster rolls who absented himself without any reasonable cause. The reference is accordingly answered. The workman is not entitled to any relief. Let the Central Government be informed and thereafter, filed be consigned.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2009

का.आ. 1391.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैं श्री तिरुमाला सर्विसेस् के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, पणजी के पंचाट (संदर्भ संख्या) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-4-2009 को प्राप्त हुआ था।

[सं. एल-14025/1/2009-आईआर(डो.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 30th April, 2009

S.O. 1391.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Panaji as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Shree Tirumala Services and their workman, which was received by the Central Government on 30-4-2009.

[No. L-14025/1/2009-IR(D.U.)]

SURENDRA SINGH, Desk Officer

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, AT PANAJI

(Before Anuja Prabhudessai, Presiding Officer)

Ref. No. IT/1/03

Shri Muthuraj B. Patil
Navjeevan Bldg.,
Near Baina Church,
Vasco, Goa

.....Workman/Party I

V/s

The Proprietor,
M/s Tirumala Services,
Off. No. 811,
Zuarinagar.

.....Employer/Party II

Party I/Workmen are represented by Adv. A.V. Nigalye

Party II/Employer is represented by Adv. M.S. Bhandokar

AWARD

(Passed on this 20th day of November, 2008)

By order dated 13-11-02 the Central Government in exercise of powers conferred under Section 10(2A) (1)(d) of the Industrial Dispute Act had referred the following dispute for adjudication of this Tribunal.

“(1) Whether the industrial dispute raised by Shri. Muthuraj B. Patil, against the management of M/s Shree Tirumala Services over his termination of the services justified? If not, to what relief the concerned workman is entitled?

2. Pursuant to the said reference IT/1/2003 was registered. Notices were issued to both parties. Party I has filed claim statement at Exb. 5. The Party II has filed written statement at Exb. 16. The case of the Party I is that he was employed in Goa Shipyard from 25-3-97 through M/s Rahavendra Works, a contractor engaged by the company for sweeping, cleaning of grass, rubbles, garbages, scrap and dirt in open areas. The Party I has stated that from 1-6-98 he was appointed by the said Contractor as

supervisor and that he continued to work in the said capacity till 17-5-2000. He has stated that the company had filed a writ petition before the Hon'ble High Court challenging the award in IT/45/98. The said reference No. IT/45/95 was made by the Central Government in terms of order passed by Hon'ble High Court in writ petition No. 406/93 filed by the workmen. The Party I further stated that in view of the interim order passed by the Hon'ble High Court not to disturb the services of the workmen employed incidental to the biennial contract, he continued to work for the new contractor Tirumala Services (Party II) 18-5-2000. The Party I has claimed that despite the tender condition not to disturb the employment of workers, Party II refused to give him the job of supervisor, and made him work as a labourer. The Party I has further stated that he had made several representations but the same were not considered and he was threatened with, dismissal from service.

3. The Party I has stated that he fell seriously ill and was unable to report for duty from 11-6-01 to 5-1-01 and that the said fact was duly informed to the Party II and leave application and medical certificate in original were also submitted to the Party II. The Party I has stated that the Party II did not allow him to resume duty and told him that fresh gate pass has to be issued to him. The Party I has stated that no such gate pass was issued. The Party I has stated that the refusal of employment from 6-10-2001 amounts to illegal termination.

4. The Party I has further stated that he has not been paid any retrenchment compensation or given one month notice or wage there of. The Party I has therefore claimed that the termination is illegal and bad in law. The Party I has stated that he had raised a dispute before the conciliation authority and that conciliation proceeding ended in failure. He has stated that subsequent to failure of the conciliation his friends has brought to his notice that the notice of enquiry was published in the newspaper wherein his name and the names of eleven other workers of the Party II had appeared. The Party I has stated that he was not involved in any misconduct stated in the charge sheet and as such he approached the office of the Party II. However he was informed that he was no longer in the service with the Party II. The Party I has stated that the termination of service is illegal and abinitio void. The Party I has therefore sought reinstatement in service with full back wages and continuity in service.

4. The Party II has stated that he had obtained a contract from Goa Shipyard Limited for sweeping, cleaning and other works within the shipyard and residential colony for a period from 18-5-2000 to 17-5-2002. The said contract was extended till 17-8-2002. The Party II has stated that earlier the said contract was awarded to M/s. Raghavendra works and after the said contract period was over, it was awarded to M/s. Mhalsa Services. The Party II has stated

that the Goa Shipyard Limited had filed a writ petition challenging the award passed in IT/45/98 wherein the services of workers employed through the contractors was ordered to be regularized. The said petition was admitted and by an interim order the parties were directed to continue the services of the persons involved in the writ petition. In view of this interim orders the services of the Party I were continued. The Party II has stated that the Party I was frequently remaining unauthorisedly absent and explanation given by him was not satisfactory. He was issued show cause notices and warnings despite which the Party I continued to remain absent. The Party I was continuously absent from 7-6-2001 and even the principal employer had asked to terminate the services of Party I from chronic and habitual absence. The Party II has claimed that Party I was working on daily wages and his constant absence from duties was detrimental to smooth functioning an working of the establishment. The Party II has further stated that the Party I was working on daily wages and since his employment was of casual nature, for specific period having regards to the contract for specific period he cannot have any claim, lien and entitlement of the employment.

5. Based on the aforesaid pleadings following issues were framed.

1. Whether the Party I proves that he was refused employment by the Party II w.e.f. 6-10-2001 ?
2. Whether the Party I proves that the termination of his services is illegal and unjustified ?
3. What relief ? What order ?

6. The matter was fixed for evidence of the workman on 10-11-2008 on which date advocate Shri A.V. Nigalye who is representing for Party I stated that he does not wish to adduce any evidence. The Party I has not stepped in the witness box and has not adduced any oral or documentary evidence to prove that the Party II had terminated his services illegally or without justifiable reasons. This being the case the Party I has failed to prove that he was refused employment and that his termination is illegal and abinitio void. This being the case the Party I is not entitled to any relief.

Under the circumstances and in view of discussion supra, I pass the following order

ORDER

It is hereby held that the Party I, Shri Muthuraj B. Patil has failed to prove that he was refused employment by the Party II. w.e.f. 6-10-2001 and that his services were terminated illegally and without justifiable reasons. Hence the Party I, Muthuraj B. Patil is not entitled for any reliefs.

No order as to cost. Inform the Government accordingly.

Dated: 20-11-2008
Panaji

A. PRABHUDESSAI,
Presiding Officer

नई दिल्ली, 30 अप्रैल, 2009

का.आ.1392.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 54/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-4-2009 को प्राप्त हुआ था।

[सं. एल-40012/105/2003-आईआर(डी.यू.)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 30th April, 2009

S.O.1392.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 54/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workmen, which was received by the Central Government on 30-4-2009.

[No. L-40012/105/2003-IR(D.U.)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Shri Ved Prakash Gaur, Presiding Officer

Dated the 15th day of March, 2009

Industrial Dispute No. 54/2004

BETWEEN

Sri M. Mahender Reddy,
S/o Naraya Reddy,
C/o J. Rajalingam,
H.No. 9-8-55, New Ramnagar,
Near Post Office,
Karimnagar.

...Petitioner

AND

1. The Chief General Manager,
Telecom, BSNL
Nampally Station Road, Abids,
Hyderabad-500001.

2. The General Manager Telecom,
BSNL, AP Circle,
Karimnagar- 505001.

3. The Sub Divisional Officer Telecom,
BSNL, Karimnagar

....Respondents

APPEARANCES

For the Petitioner : Sri D. Balakrishna Rao, Advocate

For the Respondent : Sri R. S. Murthy, Advocate

AWARD

The Government of India Ministry of Labour by its order No. L-40012/105/2003-IR (DU) dated 5-3-2004 referred the following dispute under Section 10(1) (d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Bharat Sanchar Nigam Ltd., and their workman. The reference is,

SCHEDULE

“ Whether the action of the Management of M/s. Bharat Sanchar Nigam Ltd., Karimnagar and Hyderabad in not regularizing the services of Sh. M. Mahender Reddy, Casual mazdoor working with effect from 20-11-2000 when his juniors were regularized and promoted to the next posts is justified or not? If not, to what relief the applicant is entitled for?”

The reference is numbered in this Tribunal as I.D. No. 54/2004 and notices issued to the parties.

2. The Petitioner has filed his claim statement wherein he has stated that initially he was appointed as casual mazdoor on 1-2-1986 in the office of the Sub Divisional Officer, Telecommunications and has been working continuously till this date at various places till 31-6-86 in Karimnagar from 26-7-86 to 16-3-87 in Warangal and in June, 1987 to December, 1988 in railway Electrification Project from 1-1-1989 till the date of filing this petition in Karimnagar district. The Petitioner has been working continuously with the respondent for several years but his services were not regularized though junior to the Petitioner in the services were regularized and promoted to next posts. The Petitioner has given several representations to the Respondent but no heed has been paid by the Respondents. He has further submitted that when the Petitioner was working at railway Electrification Project, 18 casual mazdoors worked in the said project along with the Petitioner were given TSM, RM and TM promotions. Their names are S.Sri Ch. Subba reddy, G.P. Rajaiah, Obul Reddy, Nshyamsunder Rao, Rama Rao etc. The Petitioner has submitted that the work entrusted to him and other casual mazdoors is of permanent and perennial nature though juniors to him were promoted and are enjoying the benefit of higher scales but no such promotion has been given to

the Petitioner. Petitioner gave representation on 18-12-2003 presenting the above facts and also mentioning that he has worked for 240 days in a year. Likewise other Petitioner also submitted their representations on 17-1-2003, 11-11-2002, 3-6-2003. The Petitioner has been working as a casual mazdoor from 1-2-1986 and he is eligible for conferring the status of temporary mazdoor w.e.f. 17-12-93. According to circle office Lr. No. TA/STB/9-1/RLGS/93 dated 26-5-1995 and second letter No. New Delhi 271-13/92-STN dated 22-10-1992. Thus the Petitioner is eligible for TSN promotion w.e.f. 17-12-93 and he has become eligible for regularization w.e.f. 1-3-96. The action of the Respondent in not considering for the regularization of the services of the Petitioner is arbitrary, illegal and contrary to the law in the violation of the principles of natural justice.

3. Counter has been filed by the Respondent management wherein the management has denied the contention raised by the Petitioner. They have stated that the contention of the Petitioner that he was engaged from 1-2-1986 at several places in Karimnagar district is wrong. They have further submitted that the contention of the Petitioner in para 2 to 6 is misconceived against the factual position to gain undue sympathy. The Hon'ble High Court of A.P. vide decision dated 22-11-2000 treated the Petitioner as fresher, the said decision has become final and thereby no scope is left to the Petitioner to claim any seniority prior to 22-11-2000. As regards the claim of Sri Ch. Subba reddy, his matter is pending before the Hon'ble High Court of A. P. in WP No.9528/2004 as a substantial question of law. As regards the case of Sri G.P. Rangaiah, Sri M.Ch. Obula Reddy, Sri N. Shyam Sunder Rao and Sri P. Ramarao, their cases are distinct and different and have no bearing or relevance to the Petitioner and as such the Petition be dismissed.

4. Parties were asked to produce their respective evidence. Petitioner has filed his own affidavit as examination in chief and has presented himself for cross examination and have been cross examined at length by the respondents. The Petitioner has filed 31 documents most of them are the circulars or letters of the head office and judgements of Hon'ble Central Administrative Tribunal and Hon'ble High Court of A.P. The respondents have also filed documentary evidence as well as the counter affidavit of Sri B. Narsinga Rao, Sub Divisional Engineer (Legal) of Karimnagar Telecom district and documentary evidence as well. Sri M. Venkata Swamy, Sub Divisional Engineer (Legal), in the office of General Manager Telecom district, Karimnagar also examined as MW2.

5. I have heard learned Counsel for the parties and have gone through the evidence produced by the parties. The Petitioner's counsel has argued before this court that the Petitioner was engaged w.e.f. 1-2-86. He has been working continuously with the respondent management and juniors to him were promoted but the Petitioner has

not been promoted nor his services were regularized by the Respondent. I have gone through the evidence of Petitioner in the light of above submissions. The Petitioner has filed Ex. W1 to prove that initially he entered in service on 1-2-86, later on he was reengaged from 28-11-98, meaning thereby that after his initial entry in the department he was disengaged and he was reengaged in 1998. He has also filed the copy of the order of the Hon'ble Central Administrative Tribunal, Hyderabad. His own representation dated 22-5-98, Ex. W17 which proves that his services were disengaged thereby he had made a representation to set aside his termination notice dated 1-5-98 and to treat him in the service. This proves that his services were terminated. In 1998 he made a representation to treat him in the service. Then he approached Hon'ble Central Administrative Tribunal, Hyderabad vide O.A. No. 64/98 which was decided on 26-5-98 and the learned Central Administrative Tribunal has passed an order that if the services of the Petitioner have not been terminated, then he shall be continued in service. This also proves that the Petitioner was terminated and reengaged. Thus, the contention of the Learned counsel for the Petitioner that the Petitioner is working from 1-2-86 continuously till the date of presentation of the Petition is not correct. Learned counsel for the Respondent has argued that the Petitioner's services were terminated, he filed a writ Petition before the Hon'ble High Court of A.P. and Hon'ble High Court of A.P. on 22-11-2000 has passed an order that the Petitioner be reengaged in service as a fresh face, in the light of this order of the Hon'ble High Court of A.P. the Petitioner was reengaged in November, 2000. As such, the claim of the Petitioner for regularization w.e.f. 20-11-2000 is neither possible nor it is factual in position because on 20-11-2000 the Petitioner was not in the service of the respondent. The Learned Counsel for the respondent has drawn the attention of this court towards the statement of the Petitioner dated 18-7-2005 wherein the Petitioner has stated that Ex. W2 is the final order of the Hon'ble High Court of A.P. dated 22-11-2000, that is the copy of the judgement in WP No 24018/98 between M. Mahender Reddy and S.D.O., Telecom. Wherein Hon'ble High Court of A.P., has ordered that respondent shall engage Petitioners afresh as casual labourers from this day and pay them the wage and other emoluments payable to casual labourer from this date. Regarding regularization of the Petitioners the Hon'ble High Court of A.P. has ordered that regularization shall depend upon the future exigency, any scheme to be launched by the management depending upon the suitability of the workmen. The Petitioner has not been able to prove that he was not reengaged in the light of the order passed by the Hon'ble High Court of A.P. on 22-11-2000. The Petitioner himself filed this judgement of Hon'ble High Court of A.P. which proves that the Petitioner was engaged as a fresh face on 22-11-2000 under Respondent's management. Thus, the date of entry of the Petitioner is 22-11-2000. As such the claim of Petitioner to

be regularized w.e.f. 22-11-2000 is unfounded and baseless and misconceived.

6. I have considered arguments of both the parties and have also gone through the statement of Petitioner and the documents filed by him. From the own documents of the Petitioner i.e., Ex. W22 it is fully proved that the Petitioner was engaged as a fresh face on 22-11-2000. Thus, the claim of Petitioner for regularization w.e.f. 20-11-2000 is neither factual nor he is entitled for regularization w.e.f. the date when he was not in the service. During his cross examination of the Petitioner, the Petitioner stated that he has based his claim on the basis of the order issued to Sri Ch. Subba Reddy. However, it has been suggested to him that the matter of Sri Ch. Subba Reddy is pending before the Hon'ble High Court of A.P., then has shown his ignorance about the pendency of any case between Sri Subba Reddy and the management. The Petitioner has further submitted that he is basing his claim and he has compared his case with S./Sri Shyam Sudner Rao, P. Rama Rao and G.P. Rangaiah because they have worked with the Petitioner at Railway Electrification Project, Nagpur. This shows and proves that the Petitioner is claiming parity with such a persons who are not equal to him. If the Petitioner has worked along with S/Sri Shyam Sudner Rao, P. Rama Rao and G.P. Rangaiah at the Railway Electrification Project, Nagpur which is entirely different department from the present management the Petitioner's case can not be compared with S/Sri Shyam Sunder Rao, P. Rama Rao and G. P. Rangaiah. As regards the case of Sri Ch. Subba Reddy concerned his case is pending for adjudication before the Hon'ble High Court of A. P.. Thus, there is no material placed by the Petitioner of this case on the file of this Tribunal to prove that any casual mazdoor junior to the Petitioner has been regularized by the Respondent management leaving Petitioner alone for the regularization or for promotion.

7. The documents filed by the Petitioner Ex. W22, that is the order of the Hon'ble High Court of A. P. is very material regarding regularization of the Petitioner's services in the Respondent management, because the Hon'ble High Court of A. P., has directed that the regularization of the Petitioners shall depend on the future exigencies, any scheme to be launched by the management and the suitability of the workmen. The Petitioner of this case has not been able to prove or place any material before this tribunal that the management has launched any scheme of the regularization, for the services of the casual mazdoors. As such, unless there is a scheme launched by the management for regularization of the services of the Petitioner, the services of the Petitioner can not be regularized on the basis of the claim put forward by the Petitioner.

8. From the above discussion, this Tribunal has come to the conclusion, Petitioner's claim for the regularization is based on misconceived and incorrect facts or misleading facts and is not entitled for regularization

w.e.f. 20-11-2000 as claimed by him. In the result, it is held, that the action of the management of M/s. Bharat Sanchar Nigam Limited in not regularizing the services of Sri M. Mahender Reddy, Petitioner w.e.f. 20-11-2000 is justified. He is not entitled for the relief claimed by him.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 19th day of March, 2009.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri M. Mahender Reddy	MW1: Sri B. Narsinga Rao MW2: Sri M. Venkata Swamy

Documents marked for the Petitioner

- Ex.W1: Copy of Ir. No. E-6-16/Vol/XI/GM/2001-2002/3 dtd. 22-2-2002.
- Ex.W2: Copy of order in OA no. 308/38 dtd. 5-5-89.
- Ex.W3: Copy of letter N.E/RE/91-92/70 dtd. 13-10-92 to WW1 by Respondent.
- Ex.W4: Copy of enquiry proceeding dtd. 5-11-92.
- Ex.W5: Copy of one month notice to WW1 dtd. 29-7-93
- Ex.W6: Copy of document of Railway Electrification Project dtd. 24-6-89.
- Ex.W7: Copy of stay order of Hon'ble Central Administrative Tribunal dtd. 20-7-93.
- Ex.W8: Copy of affidavit filed by Sri Shyam Sunder in CAT dtd. 17-9-93,
- Ex.W9: Copy of CGMT letter dtd. 26-5-95.
- Ex.W10: Copy of New Delhi letter dtd. 22-10-92.
- Ex.W11: Copy of DET notice for fresh enquiry dtd. 25-2-97.
- Ex.W12: Copy of enquiry proceedings dtd. 11-3-97.
- Ex.W13: Copy of enquiry proceedings dtd. 18-7-97.
- Ex.W14: Copy of K. Rami Reddy case dtd. 24-7-97.
- Ex.W15: Copy of termination notice dtd. 1-5-98.
- Ex.W16: Copy of Railway Electrification Project enquiry report dtd. 4-10-97.
- Ex.W17: Copy of WW1 representation dtd. 22-5-98.
- Ex.W18: Copy of termination notice dtd. 24-7-98.
- Ex.W19: Copy of interim stay order dtd. 20-8-98.

- Ex.W20: Copy of interim stay of contempt case dtd. 19-10-98.
- Ex.W21: Copy of reengagement of letter of WW1 dtd. 6-11-98.
- Ex.W22: Copy of High Court final order dtd. 22-11-2000.
- Ex.W23: Copy of order of regularization dtd. 17-4-2000.
- Ex.W24: Copy of letter reg. Sanction of posts to Karimnagar dtd. 11-7-2001.
- Ex.W25: Copy of Hon'ble C.A.T. order of Mr. Shyam Sunder dtd. 26-5-98.
- Ex.W26: Copy of Hon'ble C.A.T. order of Mr. Rangaiah dtd. 15-9-99.
- Ex.W27: Copy of the letters with regard to TSM Subba Reddy dtd. 8-11-91 & 3-5-2001.
- Ex.W28: Copy of letter reg. Part time sweeper regularization dtd. 19-7-2001 & 28-11-2001.
- Ex.W29: Copy of Ir. Reg. WW1's reengagement dtd. 22-2-2002.
- Ex.W30: Copy of Ir. Reg. Mr. Subba Reddy's engagement dtd. 27-2-2003.
- Ex.W31: Copy of letters reg. Engagement of S/Sri Shyam Sunder, Raman Rao and Rangaiah dtd. 24-1-2003.

Documents marked for the Respondent

- Ex.M1: Copy of order of Hon'ble High Court of A.P. dtd. 22-11-2000.
- Ex.M2: Copy of Ir. 269-94/98 -STN dtd. 29-9-2000. reg. Regularization of casual labourers.
- Ex.M3: Copy of Ir. 269-4/93 -STN-II(Pt.) dtd. 12-2-99 reg. Ban on casual labourers engagement.
- Ex.M4: Copy of Ir. 269-4/93 -STN-II(Pt.) dtd. 15-6-99 reg. Ban on casual labourers engagement.
- Ex.M5: Copy of Ir. 270/6/84 -STN-II(Pt.) dtd. 30-3-85 reg. casual labourers engagement.
- Ex.M6: Copy of Ir. No. 15w/C.L./89-90 dtd. 17-7-90 reg. Verification of days of casual labourers.
- Ex.M7: Copy of Ir. c 7-11-89 reg. Temporary status to casual labourers.
- Ex.M8: Copy of Enquiry report.
- Ex.M9: Copy of reference order dtd. 5-3-2004
- Ex.M10: Copy of order of Hon'ble Supreme Court of India dtd. 2-1-95.
- Ex.M11: Copy of order of Hon'ble High Court of A.P. dtd. 27-3-2006.

नई दिल्ली, 30 अप्रैल, 2009

AWARD

का.आ. 1393.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 84/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-4-2009 को प्राप्त हुआ था।

[सं. एल-40012/78/2003-आईआर(डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 30th April, 2009

S.O. 1393.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 84/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Department of Telecom their workman, which was received by the Central Government on 30-4-2009.

[No. L-40012/78/2003-IR(D.U.)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
AT HYDERABAD**

Present : Shri Ved Prakash Gaur, Presiding OfficerDated, the 1st day of March, 2009**Industrial Dispute No. 84/2003****BETWEEN**

Sri A. V. R. Seshagiri Rao,
3/1/655, Opp. Sri Latha Towers,
CVRN Nagar,
Karimnagar.

...Petitioner

AND

1. The Chief General Manager,
Telecom, BSNL
Nampally Station Road, Abids,
Hyderabad-500001.

2. The General Manager Telecom,
BSNL, AP Circle,
Karimnagar-505001.

....Respondents

APPEARANCES

For the Petitioner : Sri K. Ravinder Goud, Advocate

For the Respondent : Sri R. S. Murthy, Advocate

1. The Government of India Ministry of Labour by its order No. L-40012/78/2003-IR (DU), dated 29-7-2003 referred the following dispute under Section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Bharat Sanchar Nigam Ltd., and their workman. The reference is,—

SCHEDULE

“ Whether the action of the Management of M/s. Bharat Sanchar Nigam Ltd., Karimnagar and Hyderabad in not regularizing the services of Sh. A. V. R. Seshagiri Rao, casual mazdoor working with effect from 17-3-2000 when his juniors were regularized and promoted to the next posts is justified or not? If not, to what relief the applicant is entitled for?”

The reference is numbered in this Tribunal as I.D. No. 84/2003 and notices issued to the parties.

2. Sri A. V. R. Seshagiri Rao, Petitioner has submitted claim statement stating that he worked as casual mazdoor under control of 3rd respondent from the year 1983. He has been discharging his duties to the utmost satisfaction of his superiors and there are no complaints against his work and conduct. He worked in B.S.N.L. in the capacity of casual mazdoor in various places of the Karimnagar district. The Petitioner of this case has stated that he is the seniormost workman in the services of the respondent but juniors to him has been regularized by the respondents whereas the Petitioner has not been regularized contrary to the provisions of the Industrial Disputes Act, 1947. The action of the Respondents in not regularizing his services is arbitrary, illegal and violative of the principles of service prudence and the labour laws as well as principles of natural justice. It has further been stated that there are several permanent vacancies of the regular mazdoors in the Respondent's department. Several mazdoors were shifted to Warangal district by the Respondent after their appointment as regular mazdoors. Regular vacancy of the mazdoors were filled by the Respondents without following the seniority which is illegal and arbitrary. It is further alleged the Respondents are depriving the Petitioner of his livelihood. It has further been submitted by the Petitioner that he has been continuously working for more than 240 days in year and has become entitled for regularization. The Petitioner has further submitted that the Respondent empanelled the name of the Petitioner for regularization along with 108 other workmen vide letter dated 19-6-2000 and 4-5-2000 but the Petitioner and 31 other casual mazdoors were overlooked. However, individuals from serial Nos. 32 to 109 were absorbed as regular mazdoors. The Petitioner has stated that his name stands at serial No. 25 in the annexure being submitted along with this petition. It has further been

submitted that the Hon'ble Supreme Court of India in the case law reported in AIR 1992 SC 2130 to 2152 has laid down that adhoc, temporary workmen who had been continuously working for more than one year with normal breaks are entitled for continuation and regularization. But the respondent has not followed the guidelines pronounced by the Hon'ble Supreme Court of India. As such the Petitioner has prayed this court to direct the Respondent to regularize the services of the Petitioner and pay the wages on par with regular mazdoor w.e.f. 4-5-2001.

3. Respondents have filed their counter statement denying the averments made in claim statement and stated that the claim statement is misconceived, baseless, incorrect, barred by principles of res judicata as laid down by Hon'ble Supreme Court of India in case of Taluka Panchayat, Visnagar Vs. Ichaben Shivaram Dave 1999 SC (L&S) 1083 holding that an award of Labour Court is unsustainable u/s 11 of CPC of adjudication by Civil Services Tribunal. In this case the matter has become final vide judgement of Hon'ble Central Administrative Tribunal, Hyderabad dated 11-4-2000. Wherein the Hon'ble Central Administrative Tribunal, Hyderabad in OA No. 1343/1999 read with interim order dated 11-2-2000 in M.A.No. 102/2000 in O.A. No. 1343/99. Petitioner has not presented a correct factual position before this Tribunal. The Respondent have submitted that the Petitioner filed OA No. 1600/98 seeking regularization on the basis of the facts and circumstances related to O.A. Nos. 913 to 927/98 decided on 12-10-1998 and craved the same relief. The said OA No. 1600/98 was disposed of on 7-12-98. The Respondent have further submitted that the Petitioner of this O.A. gained illegal entry on the basis of forged and false documents of engagement in the Railways Electrification Project commencing from 1983 onwards. The applicants were retrenched on the basis of protection of seniority from the date of their initial employment. But the Petitioner did not indicate the date of initial engagement and date of termination in the said O. A. and asserted that the rejection is in gross violation of the findings of the Hon'ble Tribunal dated 12-10-98. It has further been submitted by the Respondent that the Hon'ble Central Administrative Tribunal vide interim order dated 11-2-2000 in M.A. No. 102/2000 in O.A. No. 1343/1999 directed to re-engage the Petitioner since similar direction was issued by Hon'ble High Court of A.P., in W.P.M.P.No. 25892/99 in W.P. No. 20651/99 with regard to 13 petitioners therein. The said O.A. was disposed of on 11-4-2000 with same direction as was passed on 11-2-2000 and it was further directed that the O.A. shall be treated as disposed of in accordance with the directions issued by the Hon'ble High Court of A.P. in W.P. No. 2061/99. It has further been submitted by the Respondent that the direction dated 7-12-98 of Hon'ble Central Administrative Tribunal, Hyderabad and the direction dated 12-10-98 passed in OA No. 913/98 was considered on representation dated 21-12-98 and rejected

on 18-5-99 as it could not be implemented having regard to the settled principle of law to the effect that there could not be compassionate view in case of illegal and permanent retrenchment. The Petitioner filed OA No. 1343/99 against rejection order dated 18-5-99 and sought relief of continuation of service, back wages, protection of seniority from date of termination. The Petitioner was engaged from 16-3-2000 pending outcome of W.P.No. 20651/99 which was disposed by the Hon'ble Division Bench of Hon'ble High Court of A.P. on 22-11-2000. Wherein Hon'ble High Court of A.P. directed the Respondent to engage the Petitioner as a fresh casual labourer from 22-11-2000 and pay the emoluments payable to casual labourers and were further directed that the regularization of these Petitioners shall depend upon the future exigencies and scheme to be lodged by the management and suitability of the workman. Thus, the Petitioner was engaged afresh from 22-11-2000 without any claim for back wages, seniority and other consequent benefits. The competent authority was informed of the factual position with regard to engagement of casual labourers engaged afresh on the basis of the court order vide letter No. TA/STII/20-2/Gen/2001, dated 19/20-6-2001 and the Petitioner's name was included at Sl. No. 25 in the list. It was not seniority list nor a list for regularization. The regularization is depended on the availability of vacancies and ability of the persons engaged afresh. Thus, the Petitioner has misrepresented the factual position to gain sympathy as the Petitioner is establishing his claim from 1983 without any basis or evidence. It has further been submitted by the Respondent that engagement of any workman in a year for 240 days or more as daily wage worker do not confer any right for regularization in the service. The respondent has cited the case law of the Hon'ble Supreme Court of India Passed in SLP Civil 142397/94, dated in February, 1995 in the matter between the Telecom District Engineer and K. Raja Murgasurayan. The decision relied upon by the Petitioner is not applicable in this case and petition is misconceived, deserves to be dismissed.

4. Parties were asked to adduce evidence. The Petitioner has filed his affidavit and he has been cross-examined at length by the respondents. He filed Ex.W1 which is letter No.E-6-46/Vol. XI/02-03, dated 5-9-2002 along with seniority list. Ex. W2 is letter dated 21-5-2004, Ex.W3 dated 20-11-2000, Ex.W4 letter dated 4-1-2001, Ex.W5 letter dated 3-5-2001, and Ex.W6 letter dated 19-6-2001 and all these documents are respondent's letters to their officials. The Respondent have filed 13 documents in support of their contentions raised in counter statement wherein Ex.M1 is the copy of the order of Hon'ble High Court of A.P. dated 22-11-2000. Ex.M2 is the letter dated 29-9-2000, Ex.M3 is the letter dated 12-2-1999, Ex.M4 is the letter dated 15-6-99 and Ex.M5 is the letter dated 30-3-1985 are regarding ban on casual labourers. Ex.M6 is the letter dated 17-7-90 regarding verification of service.

Ex.M7 is the letter dated 7-11-89 regarding temporary status. Ex.M8 is the enquiry report dated 4-10-97. Ex.M9 is the reference order dated 5-3-2005. Ex.M10 is the order of the Hon'ble Supreme Court of India dated 2-1-95. Ex.M11 is the Hon'ble High Court of A.P. Order dated 27-3-2006.

5. The respondent management has produced affidavit of Sri B. Narsinga Rao, Sub-Divisional Engineer (Legal) and has produced him for cross examination. Another affidavit has also been filed along with copy of judgement of Hon'ble High Court of A.P. dated 22-11-2000, passed in WP No. 23456 to 22597 of 1999. They have produced a copy of the judgement of the Hon'ble High Court of A.P. in the matter of U. Narayana and 9 others Vs. C. G.M.T., BSNL, Karimnager delivered on 11-12-2008, in the judgement of Hon'ble High Court of A.P. in the matter of U. Narayana and 9 others, passed on 17-6-2008 wherein the Hon'ble High Court of A.P. has directed the Respondents to consider the regularization of the Petitioners in terms of the claim dated 7-11-89.

6. I have heard counsels for both the parties and have gone through the case file, pleadings and evidence of the parties and the judgements of the superior courts cited by the counsels for the Petitioner and Respondent.

7. This court has to consider whether the Petitioner A.V. R. Seshagiri Rao's Regularization is due from 17-3-2000 when his juniors were regularized and promoted to next post and he has not been regularized by the Respondents and whether the action in not regularizing the services of the Petitioner is justified or not. In this context, it has to be seen whether the Petitioner is fit to be regularized on 17-3-2000 or not. In this connection, Learned Counsel for the Respondent has argued before this court that the Petitioner have moved WP 2065/99 before the Hon'ble High Court of A.P. wherein the Hon'ble High Court has passed an order on 22-11-2000 to engage the Petitioner afresh as casual labour. Thus, in the light of the order passed by the Hon'ble High Court of A.P. the Petitioner was freshly engaged on 22-11-2000 under the order of the Hon'ble High Court of A.P. Petitioner's claim for regularization as casual mazdoor from 17-3-2000 is misconceived and there was no occasion for the respondents to regularize the services of the Petitioner w.e.f. 17-3-2000, because the Petitioner was not in the service of the Respondent's department. This factual position has not been contraverted by the Petitioner's counsel. Though the Petitioner in his examination in chief on the affidavit has stated that he was working under the control of the respondent from 12-11-1983 but he has not been able to produce any document in support of the claim put forward by the Petitioner himself. The Petitioner has himself filed copy of order of the Hon'ble Central Administrative Tribunal dated 11-4-2000 passed in WP No. 1343/99 directing the Respondent to re-engage the applicant. This amply proves that when the OA No. 1343/

99 was presented before the Hon'ble Central Administrative Tribunal the Petitioner was disengaged from the service. He was ordered to be re-engaged but not engaged as ordered by the Hon'ble Central Administrative Tribunal. However, the Petitioner was engaged w.e.f. 22-11-2000 under the order of the Hon'ble High Court of A.P. thus, on the date of the alleged regularization of the juniors, the Petitioner was not in service of Respondent, he was out of service, he was engaged on 22-11-2000. The Petitioner's claim that junior to him has been regularized but has not been able to prove that any single person junior to the Petitioner was regularized on 17-3-2000. The contention raised by the Petitioner that juniors to him in the service were regularized on 17-3-2000 and he has not been regularized is not supported with any documentary or oral evidence. In his examination in chief on the affidavit the Petitioner has simply stated on oath that he was working from 11-11-1983 but this factual position is not support with the documentary evidence. As regards the contention of the Respondents that the Petitioner was re-engaged as fresh casual labour under orders of the Hon'ble High Court of A.P. w.e.f. 12-11-2000, the Petitioner has not stated any single word nor has filed any rejoinder statement denying the contention raised by the Respondents. Whereas in his cross examination the Petitioner has accepted he has been engaged from 22-11-2000. Thereby the contention of the Petitioner during conciliation proceedings that he has been in service from 11-2-2000 is incorrect. Not only that the Petitioner has further admitted in his cross examination that the Division Bench of Hon'ble High Court of A.P. has directed that, he may be engaged as a fresh case and consider for regularization depending on future vacancy, any scheme to be launched by the management to the suitability of the workman. He has further admitted that he was reinstated on 11-2-2000 as per Division Bench order. He has further stated that no person was appointed after that date nor was regularized. He has further stated that no casual labour was engaged after him. This statement of the Petitioner clearly proves that the Petitioner was the last person to be engaged as casual labourer and no person after engagement of Petitioner has been appointed as casual labour. Thus, the contention raised in the claim petition or before the conciliation officer that persons junior to him has been regularized and he is not regularized being senior to the regularized candidates is not supported with the own statement of the Petitioner. The Petitioner has further stated that he has accepted the judgement of the Division Bench and have not challenged the judgement further. Thus, it is amply proved that what respondents are saying regarding fresh engagement of Petitioner even on 22-11-2000 under order of the Hon'ble High Court of A.P. passed in WP No. 2651/99 is correct and Petitioner's contention that juniors to him had been regularized in service is neither correct nor it can be taken to be true. As per own admission of the Petitioner he was engaged on 22nd day of month of November under the

order of the Division Bench of the Hon'ble High Court of A.P. and no persons have been engaged after his engagement, he can not claim parity of the regularization against his juniors as there is no junior to Petitioner who has been regularized by the Respondent. The case of A.V. R. Seshagiri Rao is not supported by the documents and own admission of the A.V.R. Seshagiri Rao and he is not entitled for any relief from this Tribunal as claimed by him. The action of management of M/s Bharat Sanchar Nigam Limited in not regularizing services of Petitioner Sri A.V.R. Seshagiri Rao w.e.f. 17-3-2000 is neither unjust nor unfair. Petitioner is not entitled to the relief claimed.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and pronounced by me on this the 18th day of March, 2009.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri A.V. R. Seshagiri Rao	MW1: Sri B. Narsinga Rao
	MW2: Sri M. Venkata Swamy

Documents marked for the Petitioner

Ex.W1:	Copy of Ir. No. E-6-46/Vol XII/02-03 dt. 5-9-2002.
Ex.W2:	Copy of Ir. No.E1-Industrial Disputes Act, 1947 Pay Scales/04-05/19 dt.21-5-04
Ex.W3:	Copy of Ir. No. TA/STB/20-2/corr/kw/99/82 dt.20-11-2000
Ex.W4:	Copy of Ir. No.269-94/90-STN-II(Pers.IV) dt.4-1-2001
Ex.W5:	Copy of Ir. No.E-6-60/IV/TSM/2001-02/III dt.3-5-2001
Ex.W6:	Copy of Ir.No.TA/STB/20-2/GenI/2001 dt.19/20-6-2001

Documents marked for the respondent

Ex.M1:	Copy of order of Hon'ble High Court of A.P. dt.22-11-2000
Ex.M2:	Copy of Ir. 269-94/98 -STN dt. 29-9-2000 reg. Regularization of casual labourers.
Ex.M3:	Copy of Ir. 269-4/93 -STN-II(Pt.) dt. 12-2-99 reg. Ban of casual labourers engagement.
Ex.M4:	Copy of Ir. No. 269-4/93 -STN-II(Pt.) dt. 15-6-99 reg. Ban of casual labourers engagement.
Ex.M5:	Copy of Ir. No. 270/6/84 -STN dt.30-3-85 reg. casual labourers engagement.
Ex.M6:	Copy of Ir. No. 15w/C.L./89-90 dt. 17-7-90 reg. Verification of days of casual labourers.
Ex.M7:	Copy of Ir. dt. 7-11-89 reg. Temporary status to casual labourers

Ex.M8:	Copy of Ir. No.L-40012/78/2003-IR(DU) dt.29-7-2003
Ex.M9:	Enquiry report.
Ex.M10:	Copy of order of Hon'ble Supreme Court of India dt.2-1-95
Ex.M11:	Copy of order of Hon'ble High Court of A.P. dt.27-3-2006

नई दिल्ली, 30 अप्रैल, 2009

का.आ. 1394.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 55/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-4-2009 को प्राप्त हुआ था।

[सं. एल-40012/108/2003-आईआर(डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 30th April, 2009

S.O. 1394.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 55/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workman, which was received by the Central Government on 30-4-2009.

[No. L-40012/108/2003-IR(D.U.)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Shri Ved Prakash Gaur, Presiding Officer

Dated the 25th day of March, 2009

Industrial Dispute No. 55/2004

BETWEEN

Sri K. Bhagwan Reddy,
S/o Linga Reddy,
H.No. 5-6-274, Maruthi Nagar,
Kapurwada, Karimnagar.

...Petitioner

AND

1. The Chief General Manager,
Telecom, BSNL
Nampally Station Road, Abids,
Hyderabad-500001.

2. The General Manager Telecom,
BSNL, AP Circle,
Karimnagar- 505001.

3. The Sub Divisional Officer Telecom,
BSNL, Karimnagar.

....Respondents

APPEARANCES

For the Petitioner : M/s. K. Ravinder Goud & Y. Ranjit
Reddy, Advocates

For the Respondent : Sri R. S. Murthy, Advocate

AWARD

The Government of India Ministry of Labour by its order No. L-40012/108/2003-IR (DU) dated 5-3-2004 referred the following dispute under Section 10(1) (d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Bharat Sanchar Nigam Ltd., and their workman. The reference is,

SCHEDULE

“ Whether the action of the Management of M/s. Bharat Sanchar Nigam Ltd., Karimnagar and Hyderabad in not regularizing the services of Sh. K. Bhagwan Reddy, Casual mazdoor working with effect from 11-2-2000 when his juniors were regularized and promoted to the next posts is justified or not? If not, to what relief the applicant is entitled for?”

The reference is numbered in this Tribunal as I.D. No. 55/2004 and notices issued to the parties.

2. The Petitioner has filed his claim statement wherein he has stated that initially he was appointed as casual mazdoor on 1-12-1983 in the office of the Sub Divisional Officer, Telecommunications and has been working continuously at various places till the date of filing this petition in Karimnagar district. The Petitioner has been working continuously with the 3rd Respondent for several years but his services were not regularized though juniors to the Petitioner in the services were regularized. The Petitioner has given several representations to the Respondent but no heed has been paid by the respondents. It is further submitted that the Petitioner was empanelled along with other workmen vide letter dated 19-6-2000 and 4-5-2000 and individuals from Sl.No.32 to 109 of the panel list were absorbed as regular mazdoors. Not only the juniors of the Petitioner were regularized but also got promotions as telephone mechanics. The action of the respondent in not considering the Petitioner for the regularization of his services is arbitrary, illegal and contrary to the law in the violation of the principles of natural justice.

3. Counter has been filed by the Respondent management wherein the management has denied the

contention raised by the Petitioner. They have stated that the contention of the Petitioner that he was engaged from 1-12-83 at several places in Karimnagar district is wrong. It has further been submitted by the Respondent that the Petitioner approached the Hon'ble Central Administrative Tribunal vide OA No. 1345/99 which was disposed on 11-2-2000, with the direction which may be issued by the Hon'ble High Court of A.P. in Writ petition No.20651/99. The Hon'ble High Court of A.P. vide decision dated 22-11-2000 treated the Petitioner as fresher, the said decision has become final for all purposes, as such the petition be dismissed.

4. Parties were asked to produce their respective evidence. Petitioner has filed his own affidavit as examination in chief and has presented himself for cross-examination and have been cross-examined at length by the respondents. The Petitioner has filed six documents Ex. W1 to W6, most of them are the circulars or letters of the head office. The Respondents have also filed documentary evidence as well as the counter affidavit of Sri B. Narsinga rao, Sub Divisional Engineer (Legal) of Karimnagar Telecom district and documentary evidence as well. Sri M. Venkata Swamy, Sub Divisional Engineer (Legal), in the office of General Manager telecom district, Karimnagar also examined as MW2 and marked documents Ex. M1 to M11.

5. I have heard Learned counsel for the parties and have gone through the evidence produced by the parties. The Petitioner's counsel has argued before this court that the Petitioner was engaged w.e.f 1-12-83. He has been working continuously with the respondent management and juniors to him were promoted but the Petitioner has not been promoted nor his services were regularized by the Respondent. I have gone through the evidence of Petitioner in the light of above submissions. The Petitioner has filed the copy of the order of the Hon'ble Central Administrative Tribunal, Hyderabad. He approached Hon'ble Central Administrative Tribunal, Hyderabad vide O.A. No. 64/98 which was decided on 11-4-2000 and the Learned Central Administrative Tribunal has passed an order that if the services of the Petitioner have not been terminated, then he shall be continued in service. This also proves that the Petitioner was terminated and re-engaged. Thus, the contention of the Learned Counsel for the Petitioner that the Petitioner is working from 1-12-83 continuously till the date of presentation of the petition is not correct. Learned counsel for the respondent has argued that the Petitioner's services were terminated. he filed a writ petition before the Hon'ble High Court of A. P. and Hon'ble High Court of A.P. on 22-11-2000 has passed an order that the Petitioner be reengaged in service as a fresh face, in the light of this order of the Hon'ble High Court of A.P., the Petitioner was reengaged in 16-3-2000. As such, the claim of the Petitioner for regularization w.e.f.11-2-2000 is neither possible nor it is factual in position because on

20-2-2000 the Petitioner was not in the service of the Respondent. The Learned Counsel for the Respondent has drawn the attention of this Court towards the statement of the Respondent wherein the Petitioner has stated that order of the Hon'ble High Court of A.P. dated 22-11-2000 is final order, that is the copy of the judgement in WP No. 20651/99, leading to fresh engagement. Wherein Hon'ble High Court of A.P., has ordered that the Petitioner be reengaged as the Petitioner as fresh face for all purposes, thereby leaving no scope to reckon the earlier period as claimed by him for purpose of regularization of the Petitioners. The Hon'ble High Court of A.P., has ordered that regularization shall depend upon the future exigency, any scheme to be launched by the management depending upon the suitability of the workmen. The Petitioner has not been able to prove that he was not reengaged in the light of the order passed by the Hon'ble High Court of A.P., on 22-11-2000. The Petitioner himself filed this judgement of Hon'ble High Court of A.P., which proves that the Petitioner was engaged as a fresh face on 22-11-2000 under Respondent's management he has not filed any scheme launched by management for regularisation. Thus, the date of entry of the Petitioner is 22-11-2000. As such the claim of Petitioner to be regularized w.e.f. 11-2-2000 is unfounded and baseless and misconceived.

6. I have considered arguments of both the parties and have also gone through the statement of Petitioner and the documents filed by him. From the own submission of the Petitioner it is fully proved that the Petitioner was engaged as a fresh face on 22-11-2000. thus, the claim of Petitioner for regularization w.e.f. 20-11-2000 is neither factual nor he is entitled for regularization w.e.f. the date when he was not in the service. Thus, there is no material placed by the Petitioner of this case on the file of this Tribunal to prove that any casual mazdoor junior to the Petitioner has been regularized by the Respondent management leaving Petitioner alone for the regularization or for promotion.

7. The documents filed by the Respondent i.e., Ex.M11 that is the order of the Hon'ble High Court of A.P. is very material regarding regularization of the Petitioner's services in the respondent management, because the Hon'ble High Court of A.P., has directed that the regularization of the Petitioners shall depend on the future exigencies any scheme to be launched by the management and the suitability of the workmen. The Petitioner of this case has not been able to prove or place any material before this tribunal that the management has launched any scheme of the regularization, for the services of the casual mazdoors. As such, unless there is a scheme launched by the management for regularization of the services of the Petitioner, the services of the Petitioner can not be regularized on the basis of the claim put forward by the Petitioner.

8. From the above discussion, this Tribunal has come to the conclusion, that Petitioner's claim for the regularization is based on misconceived and incorrect facts or misleading facts and is not entitled for regularization w.e.f. 11-2-2000 as claimed by him. In the result, it is held, that the action of the management of M/s Bharat Sanchar Nigam Limited in not regularizing the services of Sri K. Bhagwas Reddy, Petitioner w.e.f. 11-2-2000 is justified. He is not entitled for the relief claimed by him.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 25th day of March, 2009.

VED PRAKASH CAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri K. Bhagwan Reddy	MW1: Sri B. Narsinga Rao
	MW2: Sri M. Venkata Swamy

Documents marked for the Petitioner

- Ex. W1: Copy of Ir. No. E-G-46/Vol. XII/ 02-03/12 dt. 5-9-2002.
- Ex.W2: Copy of Ir. No. E1-IDA Pay Scales/04-05/19 dt. 21-5-04
- Ex.W3: Copy of Ir. No. TA/STB/20-2/corr/kw/99/82 dt.20-11-2000
- Ex.W4: Copy of Ir. No.269-94/90-511.II(Per.V1) dt. 4-1-01
- Ex.W5: Copy of Ir. No.E-6-60/IV/TSM/2001-02/111 dt. 3-5-2001
- Ex.W6: Copy of Ir.No.1A/STB/20-2/Genl/2001 dt. 19-6-2001

Documents marked for the respondent

- Ex.M1: Copy of order of Hon'ble High Court of A.P. dt. 22-11-2000
- Ex.M2: Copy of Ir. No. 269-94/98 -STN dt. 29-9-2000 reg.Regularization of casual labourers.
- Ex.M3: Copy of Ir. No. 269-4/93 -STN-II(Pt.) dt. 12-2-99 reg. Ban of casual labourers engagement.
- Ex.M4: Copy of Ir. No. 269-4/93 -STN-II(Pt.) dt. 15-6-99 reg. Ban of casual labourers engagement.
- Ex.M5: Copy of Ir. No. 270/6/84 -STN dt.30-3-85 reg. casual labourers engagement.
- Ex.M6: Copy of Ir. No. 15w/C.L./89-90 dt. 17-7-90. Re. Verification of days of casual labourers .
- Ex.M7: Copy of Ir. dt. 7-11-89 reg. Temporary status to casual labourers
- Ex.M8: Copy of reference order dt.5-3-2004
- Ex.M9: Copy of Enquiry report dt. 15-7-97
- Ex.M10: Copy of order of Hon'ble Supreme Court of India dt. 2-1-95
- Ex.M11: Copy of order of Hon'ble High Court of A.P. dt. 27-3-2006

नई दिल्ली, 30 अप्रैल, 2009

का.आ. 1395.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 56/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-4-2009 को प्राप्त हुआ था।

[सं. एल-40012/107/2003-आई.आर.(डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 30th April, 2009

S.O. 1395.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 56/2004) of the Central Government Industrial Tribunal-Cum-Labour Court Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workman, which was received by the Central Government on 30-4-2009.

[No. L-40012/107/2003-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Shri Ved Prakash Gaur, Presiding Officer

Dated the 25th day of March, 2009

Industrial Dispute No. 56/2004

BETWEEN

Sri K. Suresh, S/o K. Laxmaiah,
H. No. 5-4-102, New Kapuwada,
Karimnagar.

....Petitioner

AND

1. The Chief General Manager,
Telecom, BSNL,
Nampally Road, Abids,
Hyderabad-500001.
2. The General Manager Telecom,
BSNL, AP Circle,
Karimnagar-505001.
3. The Sub Divisional Officer Telecom,
BSNL, Karimnagar.

....Respondents

APPEARANCES

For the Petitioner : Sri K. Srinivas Rao, Advocate

For the Respondent : Sri R. S. Murthy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-40012/107/2003-IR (DU) dated 5-3-2004 referred

the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Bharat Sanchar Nigam Ltd., and their workman. The reference is,

SCHEDULE

"Whether the action of the management of M/s. Bharat Sanchar Nigam Ltd., Karimnagar and Hyderabad in not regularizing the services of Sh. K. Suresh, Casual mazdoor working with effect from 17-12-1999 when his juniors were regularized and promoted the next posts is justified or not? If not, what relief the applicant is entitled for?"

The reference is numbered in this Tribunal as I.D. No. 56/2004 and notices issued to the parties.

2. The Petitioner has filed his claim statement wherein he has stated that initially he was appointed as casual mazdoor on 14-5-1986 in the office of the Sub Divisional Officer, Telecommunications and has been working continuously till this date in various places like Karimnagar town, HTPC, Yashwanth Nagar, Annagandam, Mancherla, etc., till the date of filing this petition in Karimnagar district. The Petitioner has been working continuously with the Respondent for several years but his services were not regularized though junior to the Petitioner in the services were regularized and promoted to next posts. The Petitioner has given several representations to the Respondent but no heed has been paid by the Respondents. He has further submitted that when the Petitioner was working at Railway Electrification Project, 18 casual mazdoors worked in the said project along with the Petitioner were given TSM, RM and TM promotions. Their names are S/Sri. G. Venkatewarlu, Ch. Subba Reddy, G.P. Rangaiah, K. Rami Reddy, N. Shyam sunder Rao, P. Ramana Rao etc.. The Petitioner has submitted that the work entrusted to him and other casual mazdoors is of permanent and perennial nature though juniors to him were promoted and are enjoying the benefit of higher scales but no such promotion has been given to the Petitioner. Petitioner gave representation on 26-6-2003 presenting the above facts and also mentioning that he has worked for 240 days in a year. The Petitioner has been working as a casual mazdoor from 14-5-1986 and he is eligible for conferring the status of temporary mazdoor w.e.f. 17-12-99. The action of the Respondent in not considering for the regularization of the services of the Petitioner is arbitrary, illegal and contrary to the law in the violation of the principles of natural justice.

3. Counter has been filed by the Respondent management wherein the management has denied the contention raised by the Petitioner. They have stated that the contention of the Petitioner that he was engaged from 14-5-86 at several places in Karimnagar district is wrong. They have further submitted that the contention of the Petitioner in para 2 to 6 is misconceived against the factual position to gain undue sympathy. The Hon'ble

High Court of A.P. vide decision dated 22-11-2000 treated the Petitioner as fresher, the said decision has become final and thereby no scope is left to the Petitioner to claim any seniority prior to 22-11-2000. As regards the claim of Sri Ch. Subba Reddy, his matter is pending before the Hon'ble High Court of A.P. in WP No.9528/2004 as a substantial question of law. As regards the case of Sri G.P. Rangaiah, Sri M. Ch. Obula Reddy, Sri N. Shyam Sunder Rao, Sri P. Ramarao, G. Venkateswarlu and K. Rami Reddy, their cases are distinct and different and have no bearing or relevance to the Petitioner and as such the petition be dismissed.

4. Parties were asked to produce their respective evidence. Petitioner has filed his own affidavit as examination in chief and has presented himself for cross examination and have been cross examined at length by the Respondents. The Petitioner has filed 25 documents most of them are the circulars or letters of the head office and judgements of Hon'ble Central Administrative Tribunal and Hon'ble High Court of A.P. The Respondents have also filed documentary evidence as well as the counter affidavit of Sri B. Narsinga Rao, Sub Divisional Engineer (Legal) of Karimnagar Telecom district and documentary evidence as well. Sri M. Venkata Swamy, Sub Divisional Engineer (Legal), in the office of General Manager Telecom district, Karimnagar also examined as MW2 and marked documents EX. M1 to M12.

5. I have heard Learned Counsel for the parties and have gone through the evidence produced by the parties. The Petitioner's counsel has argued before this court that the Petitioner was engaged w.e.f. 14-5-86. He has been working continuously with the Respondent management and juniors to him were promoted but the Petitioner has not been promoted nor his services were regularized by the Respondent. I have gone through the evidence of Petitioner in the light of above submissions. He has filed the copy of the order of the Hon'ble Central Administrative Tribunal, Hyderabad. This proves that his services were terminated, in 1998 he made a representation to treat him in the service. Then he approached Hon'ble Central Administrative Tribunal, Hyderabad vide O.A. No.24/2001 of G. P. Rangaiah which was decided on 11-11-2002 and another order in O.A. No. 689/2003 dated 19-7-2003 which is of Sri Ch. Subba Reddy which do not pertain to the Petitioner.

6. I have considered arguments of both the parties and have also gone through the statement of Petitioner and the documents filed by him. From the own documents of the Petitioner Es. W12 it is fully proved that the Petitioner was engaged as a fresh face on 17-12-99. Thus, the claim of Petitioner for regularization w.e.f. 17-12-99 is neither factual nor he is entitled for regularization w.e.f. the date when he was not in the service. During his cross examination of the Petitioner, the Petitioner stated that he has based his claim on the basis of the order issued to Sri

Ch. Subba Reddy. However, it has been suggested to him that the matter of Sri Ch. Subba Reddy is pending before the Hon'ble High Court of A.P., then has shown his ignorance about the pendency of any case between Sri Subba Reddy and the management. The Petitioner has further submitted that he is basing his claim and he has compared his case with S/Sri Shyam Sunder Rao, P. Ramana Rao and G.P. Rangaiah because they have worked with the Petitioner at Railway Electrification Project, Nagpur. This shows and proves that the Petitioner is claiming parity with such a persons who are not equal to him. If the Petitioner has worked along with S/Sri Shyam Sunder Rao, P. Ramana Rao and G.P. Rangaiah at the Railway Electrification Project, Nagpur which is entirely different department from the present management the Petitioner's case cannot be compared with S/Sri Shyam Sunder Rao, P. Ramana Rao and G.P. Rangaiah. As regards the case of Sri Ch. Subba Reddy concerned his case is pending for adjudication before the Hon'ble High Court of A.P. Thus, there is no material placed by the Petitioner of this case on the file of this Tribunal to prove that any casual mazdoor junior to the Petitioner has been regularized by the Respondent management leaving Petitioner alone for the regularization or for promotion.

7. The documents filed by the Petitioner Ex. W12, that is the order of the Hon'ble High Court of A.P. is very material regarding regularization of the Petitioner's services in the Respondent management, because the Hon'ble High Court of A.P., has directed that the regularization of the Petitioners shall depend on the future exigencies, any scheme to be launched by the management and the suitability of the workmen. The Petitioner of this case has not been able to prove or place any material before this tribunal that the management has launched any scheme of the regularization, for the services of the casual mazdoors. As such, unless there is a scheme launched by the management for regularization of the services of the Petitioner, the services of the Petitioner cannot be regularized on the basis of the claim put forward by the Petitioner.

8. From the above discussion, this Tribunal has come to the conclusion, Petitioner's claim for the regularization is based on misconceived and incorrect facts or misleading facts and he is not entitled for regularization w.e.f. 17-12-99 as claimed by him. In the result, it is held, that the action of the management of M/s. Bharat Sanchar Nigam Limited in not regularizing the services of Sri K. Suresh, Petitioner w.e.f. 17-12-99 is justified. He is not entitled for the relief claimed by him.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 25th day of March, 2009.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

WW1: Sri K. Suresh

Witnesses examined for
the Respondent

MW1 : Sri B. Narsinga Rao

MW2 : Sri M. Venkata Swamy

Documents marked for the Petitioner

- Ex. W1 : Copy of office order dt. 9-4-2001
Ex. W2 : Copy of office order dt. 5-10-2001
Ex. W3 : Copy of Ir. Addressed to AGM (legal)
dt. 24-1-2003
Ex. W4 : Copy of order of Hon'ble Central
Administrative Tribunal dt. 20-12-2002
Ex. W5 : Copy of office order dt. 4-2-2003
Ex. W6 : Copy of office order dt. 9-4-2003
Ex. W7 : Copy of office order dt. 29-4-2003
Ex. W8 : Copy of office order dt. 24-4-97
Ex. W9 : Copy of Ir. No. TA/STB/20-2/Genl/2001
dt. 19-6-2001
Ex. W10 : Copy of Ir. To G. M (legal) dt. 22-11-2002
Ex. W11 : Copy of order of Hon'ble Central
Administrative Tribunal G.P. Rangaiah
Ex. W12 : Copy of order of Hon'ble Central
Administrative Tribunal of Ch. Subba Reddy
Ex. W13 : Copy of claim statement of Subba Reddy in
OA No. 689/2003
Ex. W14 : Copy of D.O. Ir. To GMT, Karimnagar
dt. 3-6-2003
Ex. W15 : Copy of Ir. to GM by AGM, GMTD
Karimnagar dt. 27-2-2003
Ex. W16 : Copy of Ir. Addressed to AGM (Admn.)
dt. 30-1-2003
Ex. W17 : Copy of office order dt. 8-11-1991
Ex. W18 : Copy of office order dt. 3-5-2001
Ex. W19 : Copy of pay slip of P. Rangaiah for July, 2003
Ex. W20 : Copy of office order dt. 26-5-95
Ex. W21 : Copy of office order dt. 22-10-92
Ex. W22 : Copy of office order dt. 15-3-2002
Ex. W23 : Copy of office order dt. 8-5-2003
Ex. W24 : Copy of list of casual mazdoors in Karimnagar
district
Ex. W25 : Copy of office order dt. 9-4-2003

Documents marked for the Respondent

- Ex. M1 : Copy of order of Hon'ble High Court of A.P.
dt. 22-11-2000

Ex. M2 : Copy of Ir. 269-94/98-STN dt. 29-9-2000 reg.

Regularization of casual labourers.

Ex. M3 : Copy of Ir. 269-4/93-STN-II (Pt.) dt. 12-2-99 reg.

Ban on casual labourers engagement

Ex. M4 : Copy of Ir. No. 269-4/93-STN-II (Pt.)

dt. 15-6-1999 reg. Ban on casual labourers
engagement.

Ex. M5 : Copy of Ir. No. 270/6/84-STN dt. 30-3-1985 reg.

Casual labourers engagement.

Ex. M6 : Copy of Ir. No. 15w/C.L./89-90 dt. 17-7-1990 reg.

Verification of days of casual labourers

Ex. M7 : Copy of Ir. dt. 7-11-89 reg. Temporary status to
casual labourers.

Ex. M8 : Copy of reference order dt. 5-3-2004

Ex. M9 : Copy of Enquiry report dt. 15-7-97

Ex. M10 : Copy of order of Hon'ble Supreme Court of
India dt. 2-1-95

Ex. M11 : Copy of order of Hon'ble High Court of A.P.
dt. 27-3-2006

नई दिल्ली, 30 अप्रैल, 2009

का.आ. 1396 .— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडीकेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 1, धनबाद के पंचाट (संदर्भ संख्या 101/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-2009 को प्राप्त हुआ था।

[सं. एल-12011/93/2003-आईआर(बी-11)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30th April, 2009

S.O. 1396 .— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 101/2003) of the Central Government Industrial Tribunal No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 28-4-2009.

[No. L-12011/93/2003-IR(B-11)]

RAJINDER KUMAR, Desk Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference U/s. 10(1)(d)(2A) of I. D. Act

Reference No. 101 of 2003

Parties : Employers in relation to the Management of
 Syndicate Bank, Arrah, Patna, Bihar

AND

Their Workman

Present : Shri H. M. Prasad, Presiding Officer

APPEARANCES:

For the Employers : Shri Sekhar Sharma,
 Advocate.

For the workman : Shri Prabhat Chowdhury,
 State Secretary.

State : Bihar

Industry : Bank

Dated, theFebruary, 2009

AWARD

By Order No. L-12011/93/2003-IR (B-II), dated 16-9-2003 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section(I) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of Syndicate Bank, Arrah, Patna, Bihar, in not regularising the services of Sh. Sikandar Ram is correct and legal? If not, what relief the workman is entitled?”

2. Both the parties have settled the dispute amicably outside the Court. A memorandum of settlement has been filed in Tribunal. I have gone through the terms of settlement and I find the same fair and reasonable.

3. Accordingly, I pass an Award in terms of settlement. The terms of settlement shall form part of the Award.

H. M. SINGH, Presiding Officer

Ref. 101/2003

FORM H

Memorandum of settlement arrived at under Section 12 (3) of the Industrial Dispute Act, 1947 between the management of Syndicate Bank and their workmen represented by Syndicate Bank Employees Union before the presiding officer, Central Government Industrial Tribunal No. 1, Dhanbad on 05-02-2009.

Parties to the settlement :

Representing the
 Management
 Sri Agasti Jal
 Senior Manager

Representing the Union/
 Workmen
 Sri Prabhat Choudhary
 State Secretary

Syndicate Bank
 Regional Officer, Patna

S. B.E.U.
 Bihar State Committee

Short Recital of the Case

The State Secretary, S.B.E.U., Bihar State Committee had raised an industrial dispute over alleged denial of regularization of Sri Bhup Narayan Rai, Sri Sikandar Ram and Sri Krishna Prasad working in different branches of Syndicate Bank and matter was referred for adjudication in this Tribunal. In course of hearing both the parties agreed to settle the dispute on the following terms :

TERMS OF SETTLEMENT

It is agreed between both the parties that :

- (1) The following Part Time Sweepers have been regularized from the date mentioned against their names :

Sl. No.	Case No.	Name of the Candidates	Date of regularisation	Posted to Branch
1.	99/2003	Bhup Narayan Rai	02-04-2007	Danapur Niyamat
2.	101/2003	Sikandar Ram	02-12-2007	Arrah

- (2) The Management agrees to regularize the services of Sri Krishna Prasad as Part Time Sweeper at their newly opened branch Bihar Sharif where he has already joined on 15-01-2009 being the date of opening of the said branch. The Union also agrees with the same in case No. 100/2003.

- (3) The Union has requested for inclusion of temporary service of the above Part Time Sweepers into permanent service of the Bank in tune with the understanding reached with the management held at Manipal on 1-3rd, September, 1983 as well as the provision of the Bipartite Settlement in this regard.

The Management agreed to look into the matter as per the guidelines of the Bank.

Signed by :

Representing the
 Management

Sri Agasti Jal
 Senior Manager
 Syndicate Bank
 Regional Officer, Patna

Representing the Union/
 Workmen

Sri Prabhat Choudhary
 State Secretary
 S.B.E.U.
 Bihar State Committee

नई दिल्ली, 30 अप्रैल, 2009

का.आ. 1397.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 1, धनबाद के पंचाट (संदर्भ संख्या 33/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-2009 को प्राप्त हुआ था।

[सं. एल-12012/243/99-आईआर(बी-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30th April, 2009

S.O. 1397. — In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 33/2000) of the Central Government Industrial Tribunal No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 28-4-2009.

[No. L-12012/243/99-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference U/s. 10(1)(d)(2A) of I. D. Act.

Reference No. 33 of 2000.

Parties : Employers in relation to the Management of
Bank of India.

AND

Their Workman.

Present : Shri H. M. Singh, Presiding Officer.

APPEARANCES

For the Employers	: Shri Ramavtar Chamaria, Advocate.
For the workman	: Shri R. R. Prasad, Advocate & Shri B. Lal, Advocate.
State	: Jharkhand.
Industry	: Bank

Dated, the 16th February, 2009

AWARD

By Order No. L-12012/243/99-IR (B-II), dated 14-1-2000, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10

of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Bank of India through the Regional Manager, Bank of India, Giridih in terminating the services of Shri Shiv Shankar Bhagat as temporary Sub-Staff w.e.f. 30-4-1997 is legal and justified? If not, what relief is the disputant concerned entitled to?"

2. The workman has stated in his written statement that he was regularly working in the Bank of India in Giridih Region as Sub-Staff to the satisfaction of all concerned with effect from 29-10-90 till he was stopped from working on 30-4-97 without notice or notice pay. He was performing duties like, posting of vouchers in the Bank's ledger, writing of supplementary books, taking out the balance such as writing of extract books, calculation of products, preparation of Pass Books, preparation of Term-Deposit receipt, writing cash receipt scroll, pension scroll and payment scroll, preparation of collection schedules of instruments and writing of B.D.S. The concerned workman was provided employment on 29-10-90 at Bank of India, Gomia Branch under Giridih Region and worked there up to December, 1994 and thereafter he was provided employment at Bank of India, Atka Branch under the same region and worked from 12-3-95 and thereafter he was provided employment from 13-3-95 at Bank of India, Bhendra Branch and worked there up to 30-4-97 and thereafter he was stopped from job without any reason and without giving any notice-pay or any charge-sheet or show-cause. The workman concerned has worked for so many years without any break in service in the Bank in Giridih Region and he worked for about 790 days without any break at Bhendra Branch of the Bank. The nature of jobs performed by the workman concerned are permanent, regular and perennial in nature. At the beginning the workman concerned was getting Rs. 65/- per day and thereafter it was increased to Rs. 71/- per day and it was being increased as and when the Dearness Allowances and other emoluments were increased in the Bank. The work of the concerned workman was all along satisfactory. The stoppage of the concerned workman is in utter violation of the provision Under Sec. 25-F of the Industrial Disputes Act, 1947 as he was neither paid one month's pay or notice pay and retrenchment compensation, although he has worked for more than 240 days in a year. The action of the management is also against the principles of natural justice as no charge-sheet or show cause was served to him before stoppage/termination of his service.

So, it has been prayed that an award be passed in favour of the workman by directing the management to reinstate the concerned workman with full back wages.

3. The written statement has been filed by the management stating therein that the present reference is not legally maintainable. This reference is an individual

dispute and not an industrial dispute as the workman of the Bank have not sponsored the cause of the concerned person. The management is required to follow the employment procedure at the time of recruitment of employees into the service of the Bank. No officer has been empowered to select or recruit any employee on the roll of the bank according to his own choice after making any kind of selection. The constitutional provision relating to employment into the Public Sector Undertaking have to be observed at the time of selection and recruitment of employees in the service of the bank. The concerned workman failed to produce any appointment letter or any called for interview for his selection or any letter forwarding his name by the Employment Exchange. He also failed to submit any authorisation given by the Regional Manager of the Bank authorising him to work as employee of the bank in any branch or in the regional office within the jurisdiction of the Regional Manager, Bank of India, Giridih. The concerned workman failed to produce any pay slip indicating that he was paid by the bank wages for the jobs performed by him as per order of Regional Manager of the bank. The concerned workman failed to produce any authentic document to indicate that he worked in any branch of Bank of India within the jurisdiction of Regional Manager, Giridih branch. In absence of any material document of any kind, it is an absurdity to imagine that the concerned workman was engaged in the bank by the management of the Bank and his services were terminated w.e.f. 30-4-97. Thus, there exists no dispute on any kind with the concerned person and no reference can be made merely on some complaint advanced by any person posing himself as workman of the Bank of India. The concerned person made a complaint before the Conciliation Officer, Dhanbad, stating that he had worked as sub-staff at Gomia branch, Atka branch and Bhendra branch of the Bank during the period from 29-10-90 to 10-4-97 and was stopped from his duties thereafter. He alleged that his termination of service was illegal as the provision of Sec. 25-F was not complied with before terminating his service. It has been submitted that the management has no record to indicate that the concerned workman was engaged at Gomia branch, Atka branch or Bhendra branch of the Bank under the Regional Manager, Giridih in the capacity of sub-staff, hence the question of termination of his service after 30-4-97 did not arise and the question of non-compliance of provision of sec. 25F of I.D. Act, 1947. So long such a person does not hold any status of an employee, he cannot raise any demand against the management for his regularisation or permanent service. It has been submitted that any engagement illegally made by any officer of any branch of the bank does not permit such person to acquire the status of an employee of workman and he cannot claim any right for his employment in the service of the bank. The concerned person was never selected, recruited, appointed or engaged under the order or authority of the Regional

Manager in any branch of the bank, and the entire case is without any merit and demand of the concerned workman is liable to be summarily rejected.

In rejoinder the management of the Bank stated more or less same thing as has been stated in written statement. It has been denied that the concerned had worked continuously and regularly in the Bank of India, Giridih Region as sub-staff, and he worked during the period from 29-10-90 to 30-4-97. It has also been denied that he worked continuously for 790 days without any break. It has been stated that the concerned workman was never engaged and never terminated from service, so the question of violation of provision of Sec. 25F of the Act did not arise. It has also been stated that as the concerned person was never on the roll of the bank, the question of issuing chargesheet or taking disciplinary action did not arise. So the concerned workman is not entitled to any relief as prayed for.

4. Rejoinder has been filed on behalf of the concerned workman stating that the officer who appointed the concerned workman is fully authorised to appoint him. There are several papers and pay-slips to show and prove that the concerned workman was paid by the bank to the knowledge of all authorities including the General Manager. It has been stated that the concerned workman was terminated after 30-4-1997 in utter violation of Sec. 25F of the I.D. Act, 1947. It has been prayed that the concerned workman be reinstated with full back wages.

5. The concerned workman has produced himself as WW-1-Shiv Shankar Bhagat, who proved documents Exts. W-1 to W-4. The management has produced MW-1-Rabindra Nath Nayak to substantiate the case of the management.

6. The learned counsel of the workman argued that the management's witness MW-1, who is Branch Manager of Bhondre branch of Bank of India since 30-5-2003, has stated that when there is a vacancy in the said Bank the same is advertised in newspaper and the names of suitable candidates are also invited from Employment Exchange and considering the merit of each individual cases, they are interviewed and thereafter final selection is made. No any Bank authority can appoint any person in the services of the Bank without following the selection procedure. He stated that the concerned workman never been in service of the Bank between the period from 1993 to 1997. The concerned workman was never issued any interview letter. He was never an employee of the Bank. So the question of his termination does not arise. In cross-examination he admitted that the statement regarding the workman is not based upon his personal knowledge, but based on the records of the bank. He did not enquire about the functioning of the bank. He has seen the records of his branch of the bank for the period from 13-9-95 to 30-4-97. He did not check these documents and had not submitted any report. He had simply gone through the records and

documents of the said period. He said that he has read the written statements on behalf of the workman and records mentioned in para-3 are maintained by authorised clerk, which are available in the bank. He did not check any documents of Gomia Zonal Office. He went through the documents of the aforesaid period and mentioned to Raghunath Prasad, Clerk of Gomia Branch. He, however, denied that the fact that these records were maintained by the concerned workman was brought to his notice. He said that he deposed at the instance of the management and to corroborate the stands taken by the management. He stated that it is not a fact that he has not spoken the full truth.

WW-1, the concerned workman stated that he joined Gomia Branch of Giridih Region on 20-10-90 and worked there upto December, 1994. During the period the management notified the vacancy to Employment Exchange, Giridih and the said Employment Exchange forwarded his name along with others. He was issued interview letter as his name was registered in the Employment Exchange. On the basis of the interview letter he was interviewed, selected and posted at Atka Branch, where he worked upto 12-3-95 and at Bhendra Branch where he worked from 13-3-95 to 30-4-97 and thereafter his services were terminated arbitrarily without any notice, notice-pay or compensation. He was also not issued any charge-sheet. He is matriculate. He worked for more than 240 days in a year. He was engaged to do the clerical jobs which are perennial in nature. In order to prove the jobs, he did, he called for the documents, which the management did not produce and therefore adverse inference is to be taken against the management. He was paid wages by bill and through vouchers, which shows his attendance monthwise. He called for the original bills/vouchers of the relevant period from the relevant branches, which the management did not produce and therefore, he filed the photo copies of the same which have been marked Ext. W-3 on proper identification. Some of the photo copies of vouchers produced by the bank, was prepared under the hand writing of the concerned workman. He worked for more than 240 days in a year and his services were illegally and unjustifiably terminated. He is unemployed all along after termination. He is entitled to be reinstated with full back wages and consequential benefit.

7. From both oral and documentary evidence, it has been proved that an interview letter, Ext. W-2, was issued to the concerned workman and as per his name was registered in Employment Exchange (Ext. W-1) and his name was forwarded by the Employment Exchange after notification of vacancy. So it shows that his appointment was given after due procedure of recruitment. The workman never said that he was given any appointment letter, but the attendance put by him at least from the year 1994 to 1997 in Gomia, Atka and Bhendra Branches of the bank and payment was made against his work to him as

per Ext. W-3 series clearly prove that he worked in those branches of the bank and payments show that his appointment and work was with full knowledge of all authorities of the bank. In this respect reference has been made in the case of 2005-SCC-(L&S) 963 in which Hon'ble Supreme Court held - "Even though respondent had no letter of appointment appellants-employer having failed to rebut the case that Respondent had established as to his having worked more than 240 days in a year, workman is entitled to reinstatement with back wages."

8. Ext. W-3 shows that he has put in total of 790 days attendance during the period from 1994 to 1997 and more than 240 days attendance in the year. Even during the year 1996 to 1997 his attendance is more than 240 days. Bills showing attendance and vouchers of payment are also the documents of the Bank.

Attendance sheet and Bills as per Ext. W-3 series:

May, 1995 to April, 1996			May, 1996 to April, 1997		
Month	Year	Days	Month	Year	Days
May	1995	25	May	1996	22
June	1995	25	June	1996	27
July	1995	25	July	1996	25
August	1995	23	August	1996	26
September	1995	21	September	1996	23
October	1996	21	October	1996	23
November	1996	25	November	1996	24
December	1996	21	December	1996	25
January	1996	25	January	1997	20
February	1996	11	February	1997	18
March	1996	23	March	1997	24
April	1996	22	April	1997	21
Total days:		267	Total		278 days:

All the documents show that he was appointed by following due procedure. He worked for more than a year and put in more than 240 days attendance and he was stopped from work without any charge-sheet, notice or notice-pay and without any compensation. So, the provision of Sec. 25-F of the Industrial Dispute Act, 1947 was not complied with his termination is illegal as per settled law. It has also been held by Hon'ble Supreme Court in case of Mohan Lal Vs. Bharat Electronics Ltd. reported in 1981-3-Sec.-225-Termination without compliance of Section 25-F of the Industrial Disputes Act, 1947 is not only illegal, but the workman will be entitled to be declared continuing in service.

9. Document filed as per Ext. W-3 shows that he was not only given basic pay but also D.A. and H.R. was also paid from 1995 to 1997. It only shows that he was employed by the management and he worked for more

than 240 days. The workman referred 2005 Supreme Court Cases (L&S) 963 in which reference has also been made (2004) 8 SCC 246, (2002) 3 SCC 25 and (1978) 2 SCC 358, in which Hon'ble Supreme Court laid down-Employer-employee relationship-Onus and degree of proof of employment- Held, onus of proof that a claimant was in employment of a management primarily lies on person who claims to be a workman - Degree of proof so required would however, vary from case to case. In the instant case, respondent workman having established a *prima facie* case that he was a workman and appellant management not having taken care even to rebut the same with any evidence, held, question of workman further proving his case did not arise. Hence even though respondent had no letter of appointment, appellant employer having failed to rebut the case that respondent had established as to the having worked more than 240 days in a year, workman entitled to reinstatement with back wages. Appeal dismissed with cost. Industrial Disputes Act, 1947- Sec. 25F and 11- Burden of proof-onus and degree of proof- Evidence Act, 1972, Ss. 101 to 103.

10. Learned counsel of the workman referred (1981) Supreme Court Cases 225 in which Hon'ble Supreme Court laid down and also referred cases- 1957 SCR 121; AIR 1957 SC 121, 1956 SCR 872, AIR 1957, SC 95, 1976(4) SCC 222, 1976 SCC (L&S) 583, (1977) 1 SCR 586 and (1980) 3 SCC 340-“Labour and Services- Industrial Disputes Act, 1947 (14 of 1947) Sections 2(oo), 25-F and 25B (2) - Retrenchment - Termination simpliciter of services of a temporary workman, not falling within the excepted or excluded categories mentioned in Section 2(oo), held, if would amount to 'retrenchment' - If immediately preceding the date of termination of service, such workman actually worked for not less than 240 days within a period of 12 months under the employer, held, he will be deemed to be in 'continuous service' for one year under Sec. 25-B (2)(a) (ii) and therefore, would be entitled to retrenchment compensation under Section 25-F- Termination of his services without complying with Section 25-F would render the order of termination void ab initio entitling him to a declaration for continuation in service with full back wages- Termination.

Labour and Services- Reinstatement -In case of illegal termination of service, worker is deemed to be continuing in service and is entitled to reinstatement with full back wages.”

11. The management's witness has stated in cross-examination at page- 2-“I cannot identify the handwriting of the concerned person. I could not enquire about the functioning of the concerned person in the said branch from any other employer posted there. It only shows that the management's witness cannot say whether the work as has been stated by the concerned workman performed by him during the course of his service regarding posting of vouchers in the ledger, writing of supplementary books, taking out the balance such as writing of extract books,

calculation of products, preparation of Pass Books, preparation of Term-Deposit receipt, writing Cash receipt scroll, person scroll and payment scroll, preparation of collection schedules of instruments and writing of B.D.S. He could not say anything. There is no course open to the Court to accept the version of the concerned workman who has stated truth on oath that he prepares these types if jobs in performance of his duty with the bank. It shows that the management's witness did not tell truth before the Court. Only told that the concerned workman worked with the bank. The records were duly maintained in the said branch of the said period 1996 to 1997 though the MW-1 has admitted at page 2 that records were duly maintained in the said branch of the said period i.e. between 30th March, 1995 to 30th April, 1997 and he again stated in cross-examination- “I could not find out as to who were those employees who maintained those records during the relevant period.” It only shows that he does not want to tell truth that the concerned workman had maintained these records during the said period. These records were maintained to the Bank from 30th March, 1995 to 30th April, 1997 but who maintained it he does not know. It shows that the concerned workman had worked continuously for more than 240 days with the management and the management illegally and arbitrarily, without notice or notice-pay and without paying any compensation terminated the service of the concerned workman. The management violated the Section 25-F of the Industrial Disputes Act, 1947

In view of the discussions made above, I come to the conclusion that the termination of service of the concerned workman in violating Sec. 25 F of the I.D. Act is not justified and the concerned workman is entitled to be reinstated in service with 50% back wages.

12. Accordingly, I render the following award-The action of the management of Bank of India through the Regional Manager, Bank of India, Giridih in terminating the services of Sri Shiv Shankar Bhagat as temporary sub-staff w.e.f. 30-4-1997 is not legal and justified and hence the concerned workman is entitled to be reinstated in service with 50% back wages. The management is directed to implement the award within 30 days from the date of award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2009

का.आ. 1398 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इण्डियन बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निरिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, इलाहाबाद के पंचाट (संदर्भ संख्या 11/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-2009 को प्राप्त हुआ था।

[सं. एल-12012/134/2005-आईआर (बी-11)]

राजेंद्र कुमार, डेप्युटी अधिकारी

New Delhi, the 30th April, 2009

S.O. 1398.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 11/2006) of the Central Government Industrial Tribunal, Ernakulam now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Bank and their workman, which was received by the Central Government on 28-4-09.

[No. L-12012/134/2005-IR(B-II)]

RAJINDER KUMAR, Desk Office

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present : Shri P.L.Norbert, B.A., LL. B., Presiding Officer
(Friday the 13th day of February, 2009/24th Magha, 1930)

Industrial Dispute No. 11/2006

Workman : Shri K. Ravindranathan, Kinattingal

House, Pallassena P.O., Palakkad.

By Adv. H.B.Shenoy.

Management : The Deputy General Manager.

Indian Bank, P.B. No. 3575, 38/1672-B&C,
Chittoor Road, Palleppady Junction,
Ernakulam-682035.

By Adv. Sri S. Easwaran.

This case coming up for hearing on 11-02-2009, this Tribunal-cum-Labour Court on 13-02-2009 passed the following :

AWARD

This is a reference made under Section 10(1)(d) of Industrial Disputes Act. The reference is :

"Whether the action of the management of Indian Bank in imposing the punishment of removal of Shri K.Ravindranathan from its services on the alleged charges of financial misappropriation and unauthorised absenteeism is justified or not? If not what relief he is entitled to?"

2. The facts in a nutshell are as follow: The workman Sri K.Ravindranathan was working in Indian Bank, Vadakarapathy branch as Agricultural Assistant. While so, alleging certain misconduct a charge sheet was issued to him on 1-10-2002 by the disciplinary authority. The allegation is that amounts entrusted by customers for remittance in loan accounts were not remitted by him and the money was misappropriated by him. Another charge is that he remained absent continuously since 20-10-2001. An enquiry was conducted on the said charges and he was found guilty of all the charges. Disiplinary Authority removed him from service. Aggrieved by the action of the management the workman has raised the Industrial Dispute.

3. According to the workman the entire disciplinary proceedings is vitiated by bias. The punishment imposed

is illegal. The enquiry was conducted violating the principles of natural justice. The enquiry was conducted by an officer junior to the Branch Manager and the Investigating Officer. The statements of several persons recorded by Investigating Officer were marked without examining the authors of the statements. There are no materials to prove the charges. The workman was not given opportunity to represent against the enquiry findings. No major misconduct is made out and hence the punishment of removal from service is illegal. At any rate the punishment is highly excessive and disproportionate. The disciplinary authority has not considered the extenuating circumstances of the workman. The workman is entitled to be reinstated with all consequential benefits.

4. According to the management the enquiry was conducted in accordance with the procedure and complying with the principles of natural justice. The workman as Agricultural Assistant acted on behalf of the bank for recovering the dues from loanes. However he did not remit the amount collected in the bank and misappropriated the same. The Enquiry Officer found the workman guilty on the basis of the evidence on record. It is after getting the representation submitted by the workman on the findings of Enquiry Officer that the disciplinary authority proposed the punishment of removal from service. The workman was heard regarding the proposed punishment. Though workman filed an appeal he did not succeed. The workman had not raised any objection before the Enquiry Officer regarding marking of documents Exts. MEX-5, 6 and 16. However all the documents were marked through MW 1 the Branch Manager. The workman had misappropriated nearly Rs. 67,000. Misappropriation of public money is a major misconduct. Therefore the punishment is proportionate to the charges. No leniency in the matter of punishment is called for.

5. In the light of the above contentions the points that arise for consideration are :—

1. Are the findings sustainable?

2. Is the punishment proper?

The evidence consists of the oral testimony of MW1 and Ext. M1 Enquiry File on the side of the management and no evidence on the side of the workman.

6. **Point No. 1:—** The charge sheet was issued to the workman on 01-10-2002. The first charge is that he had collected an amount of Rs.2,000 from one M.C. Chandran for remittance in I.R. D. P. loan account. However the workman did not remit the amount, but misappropriated the same. The 2nd charge is that as Agricultural Assistant he was authorised to collect agricultural loan instalments from loanes. An amount of Rs. 1,08,625 was collected from 18 loanes who were members of Kozhipara Milk Producers Co-operative Society for a period of 2 years from June 1999. Out of this he remitted only Rs. 52,155 in the respective accounts and the balance amount of

Rs. 56,470 was misappropriated by him. The 3rd charge is that he remained absent continuously and unauthorisedly from 20-10-2001 onwards.

7. As per charge No. 1 workman is alleged to have misappropriated Rs. 2,000/- Ext. MEX-5 is a complaint of the account holder Sri. M.C. Chandran dated 26-07-2001. As per the complaint the account holder had entrusted Rs. 2,000/- to the workman for remittance in his loan account. But it was not remitted. MW1 is the Branch Manager. He had verified the books of account and found the complaint to be true. He has given evidence to that effect before the Enquiry Officer. He identified Ext. MEX-5. But the learned counsel for the worker submits that Ext. MEX-5 was not properly marked. According to the learned counsel the complainant should have been examined to mark the complaint. But it is to be noted that the complaint is addressed to the Branch Manager. Either the sender or the receiver of the complaint is competent to prove the document. According to the complainant the amount was entrusted to the workman on 16-5-2001. Ext. MEX-14 is the Cash Scroll register of 16-5-2001. On that day no remittance is seen made by account holder M.C. Chandran. Ext. MEX-15 is rough cash book of 16-5-2001. That also does not show that there was any remittance in the account of M.C. Chandran on 16-05-2001. But the complainant is seen to have sent another letter to the Branch Manager after two days from the date of Ext. MEX-5 stating that he has no complaint against the workman, that they know each other for the last 10 years, that they lend and borrow money and that on 16-05-2001 he had not entrusted money to the workman for remittance towards the loan. The statement in Ext. MEX-6 is contrary to the statement in Ext. MEX-5. Ext. MEX-5 being the first statement of the account holder it must be taken to be true. Ext. MEX-6 can in the circumstances be considered only as an afterthought to help the workman out of the trouble. It is relevant to note that no question was put to MW1 regarding Ext. MEX-6 in the cross examination. Ext. MEX-7 is identified by MW1 to be the counter foil of the pay-in-slip for remittance of Rs. 2,000 in the account of Sri. Chandran. Though the identity of Ext. MEX-7 was questioned by the defence while cross examining MW1 the witness affirmed that it is a counter foil entrusted by Chandran to him and the counter foil belongs to Vadakarapathy branch. It is relevant to note the reply of workman (Ext. MEX-9) to the show cause memo issued to him on 11-08-2001. The workman does not specifically deny that on 16-05-2001 Rs. 2,000/- was entrusted to him by Chandran. He also does not say that the said amount entrusted to him was the amount borrowed from him by C. Chandran. His contention in Ext. MEX-9 is that Sri. M.C. Chandran and workman are close friends and they have personal money transactions and those transactions have nothing to do with the I.R. D.P. loan or the banking operations of Sri. M.C. Chandran. In the light of Exts. MEX-5, 7, 14 and 15 and the oral testimony of MW1 it is abundantly clear that Rs. 2,000 was entrusted to

the workman by Sri. M.C. Chandran on 16-05-2001. But the same was not remitted in bank by the workman.

8. Charge No. 2 is that as Agricultural Assistant the worker was authorised to collect instalments of loans from borrowers who were agriculturists and members of Kozhipara Milk Producers Co-operative Society. The allegation is that he had collected Rs. 1,08,625 but remitted only Rs. 52,165 in respective loan accounts of the borrowers, and the balance amount of Rs. 56,470 was misappropriated by him. The names of 18 account holders, amount collected and amounts remitted are mentioned in the charge sheet. No reply is seen sent to the memo of charges. Exts. MEX-3 and 12 are complaints of Secretary of the Kozhipara Milk Producers Co-operative Society to the Branch Manager alleging that the entire amounts collected by the workman from loanees were not remitted in respective accounts. MW2 is the Secretary of the society. She has identified Exts. MEX-3 and 12. Ext. MEX-4 is an undertaking of the workman to the society given on 27-07-2001 stating that the amount collected by him from Milk Society will be remitted with interest. Ext. MEX-4 is also identified by MW2. Ext. MEX-4 is addressed to the Secretary, Smt. Jameela. In Ext. MEX-9 reply to the show cause memo the worker admits that he had given a letter of undertaking to the Secretary of Milk Society. However, he denies that the amount mentioned in the undertaking has any connection to the loans. In Ext. MEX-3 complaint of Secretary to the Bank the names of borrowers, details of amounts collected and the dates of collections are mentioned. Ext. MEX-16 series (13 in number) are complaints of borrowers sent to the Branch Manager. It is argued by the learned counsel for the workman that all these complaints are written in the same handwriting and hence their genuineness is doubtful. But it is to be noted that these loanees are agriculturists from village and many of whom are illiterate and some semi-literate. Some of them have affixed their thumb impression and others have managed to put their signature either in Tamil or English letters in Ext. MEX-16 series. MW1 identified MEX-16 series. There is no cross examination regarding Ext. MEX-16 series. MW2 has given evidence that the borrowers are members of the society and they had entrusted money for remittance in their agricultural loan accounts. But they were not credited in respective accounts by the workman. In the light of this evidence there can be no doubt that the workman is guilty of the charge of misappropriation of money of Rs. 56,470.

9. The 3rd charge is that the workman remained absent unauthorisedly from 20-10-2001 onwards. Ext. MEX-8 is copies of Attendance Register for the period from October 2001 to March 2003. As per the attendance register since January 2002 the workman has not attended the bank. From October 2001 to December 2001 he was on leave continuously. The workman has not produced any evidence to show that he had applied for leave during the period of absence at least from January 2002 onwards. MW1

says that the workman is remaining absent since October 2001 and identifies Ext. MEX-8. In the absence of any evidence on defence side and in the light of Ext. MEX-8 and the testimony of MW1, the conclusion that the absence is unauthorised is inevitable.

10. Thus the findings of the Enquiry Officer that the workman is guilty of all the charges levelled against him is supported by documentary and oral evidence. There is no reason to differ from the findings of the Enquiry Officer.

11. Point No. 2:—The punishment imposed is removal from service. According to the worker the punishment is harsh and disproportionate. However the charge proved is gross misconduct of misappropriation of money. The amounts misappropriated belongs to poor illiterate agriculturists of the village. The mischief was committed at different intervals during a period of two years. Besides the money of another account holder was also misappropriated. According to the worker he has a clean past record of service. After the suspension he is unemployed, has no source of income and his family depends on him. These cannot be considered as extenuating circumstances when they are juxtaposed with the charges proved against the workman. I don't propose to interfere with the quantum of punishment either.

In the result an award is passed finding that the action of the management in imposing the punishment of removal of the workman from service is legal and justified and he is not entitled for any relief.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 13th day of February, 2009.

P. L. NORBERT, Presiding Officer

Appendix

Witness for the Union : Nil
 Witness for the Management :
 MW1-20-02-2007- Shri Balakrishnan. R.
 Exhibit for the Workman : Nil
 Exhibit for the Management
 M1- Enquiry File.

नई दिल्ली, 30 अप्रैल, 2009

का.आ. 1399.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स मार्यन फार्वार्डिंग कारपोरेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 2/73/2005 के अंतर्गत 2/6/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-2009 को प्राप्त हुआ था।

[सं. एल-12025/1/2009-आईआर(बी-II)]
 राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30th April, 2009

S.O. 1399.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/6 of 2007 in Ref. No. 2/73 of 2005) of the Central Government Industrial Tribunal No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Maryn Forwarding Corporation and their workman, which was received by the Central Government on 28-4-2009.

[No. L-12025/1/2009-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
 INDUSTRIAL TRIBUNAL-CUM-LABOUR
 COURT No. 2, MUMBAI

PRESENT

A. A. LAD, Presiding Officer

Misc./Appln./CGIT-2/6 of 2007
 (In Ref. CGIT-2/73 of 2005)

Parties :

M/s. Maryn Forwarding Corporation
 B-98, Cotton Exchange Building, 2nd Floor,
 Opp. Cotton Green Railway Station,
 Cotton Green (E),
 Mumbai-400 032

....Applicant

V/s.

Shri Gulab Singh Rawat
 Room No. 2, Rajaram Yadav,
 Utkarsh Nagar,
 Tembipada Road,
 Bhandup (W),
 Mumbai-400 078

...Opponent

APPEARANCES

For the Applicant : Mr. Sanjay Dhulapkar,
 Advocate

For the Opponent : In person

Mumbai, dated, the 19th January, 2009

JUDGMENT

Applicant states as under :

1. Applicant is first party of Ref. CGIT-2/73 of 2005 which was engaged in the business of loading and unloading of shipments and transportations of containers.

2. On account of various aspects including shifting of shipment activities to Nhava Sheva Port there was considerable fall in the business of the company as a result of that, company suffered very heavy losses. Company had to stop its activities from April 2005. It is stated that, the situation of company became so bad that Company was not having any liquid cash to make payment toward salary of employees. It is stated that creditors of the company and finance institutions increased their pressure for recovery of their dues on the company. As a result of that, situation gone beyond the control of the company and no option remained with company but to close down its activities w.e.f. 20-12-2005. It is stated that during that period there was no employee working with applicant company and as such, no question arise to terminate services of any of the employee.

3. It is further stated that, in that whole process, company did not receive any notice from this Court nor any intimation from other sources. Since there was closure of company, nobody was in the office site of the company.

4. It is stated that one of the Partners of the Company Mr. Yogesh Patel who was earlier residing at 7-B Suvas Apartment, 68-F, Nepean-Sea Road, Mumbai said premises was taken over by Bank and sold off in the year 2006 for recovery of his debt. It is stated that Markand Patel second partner on account of loss of business left the activities of the company and is engaged for religious work. As per the applicant on 15-4-2007, company received letter posted at the address of Partesh Patel son of Markand Patel which was handed over by Markand Patel from which applicant learnt that, an ex parte award was passed against the applicant company. It is stated that, since applicant was not aware of the reference pending before this court, did not appear in the reference which resulted in reference disposing ex parte. So it is prayed that decision given in the reference was given without hearing the applicant company. Applicant has good case. If said award is not set aside, it will affect on the applicant company. So it is prayed that, award passed dated 27-10-2006 be quashed and set aside with direction to restore the Ref. CGIT-2/73 of 2005 and to decide on merits. Besides, both will get an opportunity to lead evidence.

5. This prayer is disputed by the opposite party i.e. workman by filing reply Ex-7 stating that, false case is made out by the applicant company. It is stated that, applicant company purposely remained absent in the reference knowing that, reference was pending here. It is stated that, entire Patel family has got vested interest in the applicant company. They purposely remained absent in the proceeding. Since legal dues of the opposite party were not paid for closing the business. False case is made out only to prolong the proceeding and deprive the workman to get fruits of the award. So it is prayed that, application may be rejected.

6. In view of above pleadings following points arise for determination :

Issues	Findings
(i) Whether applicant proves that it had sufficient reason to stay away from reference?	No.
(ii) Is reference required to be restored?	Yes.
(iii) What order?	As per order below.

Reasons

Issues 1 & 2

7. By this application, one of the partners of the applicant company states that, he was not aware about this reference pending before this Tribunal. The applicant company has closed down its activities w.e.f. 20-12-2005. At the time of closure, no employee was working with applicant company. Since applicant company has closed down its activities, no body was visiting the place of applicant company. During that period notice of reference was not served on the applicant company and as a result of that, reference was decided ex parte. It is disputed by workman saying that, false case is made out by applicant company.

8. Learned advocate for the applicant submits that, reference was decided ex parte which is matter of record.

9. Record & proceedings reveal that, reference was decided ex parte on 27-10-2006. That means there was no pleading of Applicant Company and case of applicant in the reference about demand of the workman. So definitely decision given was a decision given ex parte. Applicant company files this application to restore the reference to decide on merits which in my considered view, require to consider in the interest of justice.

10. However application is filed after four to five months from the date of the award. Workman is out of job and without any relief. The reason of leaving work place and no knowledge of proceeding has little scope to consider. So in the interest of justice, if I allow this application and restore Ref. CGIT-2/73 of 2005 on file to decide on merits by awarding cost of Rs. 1000/- from which I feel, it will meet ends of justice. So by awarding cost of Rs. 1000/- on Applicant company, I am restoring Ref. CGIT-2/73 of 2005 to decide on merits. Hence the order :

ORDER

1. Application is allowed on depositing cost of Rs. 1000/- to workman.

2. Ref. CGIT-2/73 of 2005 is restored on file to decide on merits.

3. After depositing Rs. 1000/- cost to workman, issue notice to workman to attend reference.

Date : 19-1-2009

A. A. LAD, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2009

AWARD

का.आ. 1400.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कोलकाता के पंचाट (संदर्भ संख्या 22/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-2009 को प्राप्त हुआ था।

[सं. एल-12012/49/2004-आई.आर. (बी-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30th April, 2009

S.O. 1400.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 22/2004) of the Central Government Industrial Tribunal Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workmen, which was received by the Central Government on 28-4-2009.

[No. L-12012/49/2004-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA****Reference No. 22 of 2004**

Parties : Employers in relation to the management of Bank of India

And

Their Workmen

Present : Mr. Justice C. P. Mishra, Presiding Officer**APPEARANCE**

On behalf of the : Mr. B. D. Patro, Senior Manager
Management

On behalf of the : Mr. A. Mitra, Co-worker.
Workman

State : West Bengal.

Industry : Banking

Dated, the 23rd February, 2009

By Order No. 12012/49/2004-IR(B-II) dated 14-6-2004 the Central Government in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of Bank of India (Eastern Zone) 5 B. T. M. Sarani, Kolkata—700001 in dismissing Shri Anjan Lahiri, Accounts Clerk from the service is legal and justified? If not, what relief the concerned workman is entitled to?”

2. This reference has been made at the instance of Shri Anjan Lahiri the concerned workman in this case. The case of the workman as it appears from his statement of claim in short is that he was appointed as a Accounts Clerk in the Bank of India, hereinafter to be referred as the Bank in the year 1971 and confirmed as permanent staff on 28-4-1972. He worked in different branches and departments of the Bank with very good reputation and satisfaction of his superior officers. The Bank introduced a product known as Bank's India Card in the year 1996 and invited applications from the staff members and also from its account holders on certain terms and conditions as mentioned on the back of the application form for the same. The workman along with other staff members of the Bank applied for the same in the year 1996 which was issued to him on 12-9-1996 and the expiry date of which was 1-10-1998. The Bank, however, has illegally dismissed him from service by violating the terms and conditions laid down in the application form for issuance of the Bank's India Card on the plea of misuse of the said card causing overdrawn of account amounting Rs. 2,17,60.15 plus interest of approximate Rs. 1.25 lacs. The entire principal amount and the penal interest has been taken away by the Bank illegally from his terminal benefits after illegal termination from service. He has referred to paragraph 19 of the terms and conditions under the heading Billing and Settlement and points out that as per this term a service charge @ 2.5% per month or such other rate that may be notified by the Bank from time to time will be levied till the overdraft is settled and this temporary overdraft should be adjusted within a maximum period of 15 days, but no due date has been mentioned for obtaining Bank's India Card. It is, however, not mentioned in the rules and regulations, laws and byelaws laid down in the terms and conditions that misuse of the said Card is a punishable offence and the Bank will initiate disciplinary action against the staff members if they do not pay within 15 days. The workman has also stated that along with him numerous staff members have been issued such cards by the Bank, but the Bank has not dismissed a single staff member who also misused the same card causing overdrawn of their respective bank accounts, but he is the only staff member in the Kolkata Zone who has been dismissed by the Bank on the plea of

misuse of the said card. The workman has further stated that some unknown persons disclosing themselves as friends of his brother-in-law carrying business in Nepal used to come to his house and forced him to entertain them in big Hotels and Restaurants, otherwise they would have taken severe steps and actions against him. They also threatened to murder his brother-in-law and as such to protect his brother-in-law and other family members, he was forced to entertain them in big Hotels and Restaurants in Kolkata by using Bank's India Card which reflected in the Bank account of the said card. In the aforesaid circumstances he was under serious pressure to frequently use the said card which caused overdrawn of the spending limit fixed by the Bank. He lodged a complaint before the local Police Station on 4-10-1996 being General Dairy No. 253 for his family protection and a copy of the same complaint was forwarded to the Chief Manager, Kolkata Branch of the Bank the issuing Branch with a letter stating inter alia to stop the said India Card facility in his favour. A copy of the same was also forwarded to India Card Department, Head Office in time for taking necessary steps but the Bank has not taken any action to stop the facilities or to give reply to it. He received a letter from the Zonal Manager, Kolkata Zone of the Bank advising him to pay the entire overdrawn amount forthwith, failing which the Bank will take appropriate action in this regard. He also received a memorandum along with chargesheet dated 13-1-1997 directing him to appear before a departmental enquiry constituted against him in the matter. The workman has denied all the charges framed against him for misuse of the said card. Though he has never admitted that the said card has been misused by him, the Enquiry Officer found him guilty. It is stated that the Bank had illegally constituted the enquiry as there is no rule in terms and conditions laid down by the Bank to initiate any disciplinary proceeding for the misuse of the said card and that the Bank can only charge penal interest till settlement of the bill or dues and the Enquiry Officer had been directed and instructed by the Chief Manager, Industrial Law Dept. to submit a report in this regard so that the workman can be dismissed from service. These facts are alleged to have been admitted by the Enquiry Officer. It is further stated that the if an employee is dismissed from service for charge of gross misconduct, he will not get employee's contribution towards Provident Fund and gratuity as per Sastri Award, but the Bank in this paid the entire amount of P.F. and gratuity to the concerned workman after dismissal from service and so he is not guilty. According to him the Bank has levelled false charges against the workman. The action of the Bank in this regard is stated to be preplanned and motivated which has actually put him in double jeopardy. According to the workman the Bank has not suffered any loss and he did not act prejudicial to the interest of the Bank as the entire dues along with penal interest were recovered from him. The action of the Bank is said to be in violation of Articles 14, 16, 20 of the Constitution of India

and also in violation of the Banking Regulation Act, 1949, Sastri Award, Desai Award and Bipartite Settlements. It is also stated that the charges were levelled against him under Clause 19.5(j) of the Bipartite Settlement for gross misconduct which is not applicable to him as the Bank has recovered Rs. 1.25 lakh as penal interest and as such it is an income for the Bank and not loss in the matter. The charges should have been framed under Clause 19.7(L) for minor misconduct in this regard. It is further stated that the guidelines as contained in Circular No. 91/20 dated 3-5-1997 regarding overdrawn accounts due to misuse of Bank's India Card is not applicable to him as the same has been issued in the year 1997/98 long after the incident in this regard. The workman moved Writ Petition No. 1624 of 2001 before the Hon'ble Calcutta High Court and on the basis of the direction given by the Hon'ble Court he approached the Regional Labour Commissioner (Central) and the conciliation proceedings started but the Bank boldly denied and refused to reinstate him and as such conciliation failed and a failure report was sent to the Central Government and ultimately the present dispute has been referred to this Tribunal for adjudication. The workman prays for his reinstatement in service with back wages along with 2.5% interest per month and also all other consequential benefits.

3. In the written statement filed by the management of the Bank it is stated that the present order of reference is without and/or excess of jurisdiction and nullity and it suffers from error apparent on record and it has been made without any application of mind. The reference is also stated to be based on misconceived interpretation and erroneous understanding of the provisions of law and is a product of misapplication of the relevant materials and capricious. The case of the Bank is that the concerned workman during the course of his employment in the Bank misused the India Card facilities given to him by Card No. 5420-3430-1716-9009 issued on 24-8-1996 thereby raising the liabilities to the extent of Rs. 2,11,760.15p. as on 30-9-1997 plus interest due in contravention of the terms and conditions made in this regard and he did not meet his liabilities within 15 days of the over-drawings. The details of which have been given by the Bank for the period from 9-1-1997 to 15-9-1997. The concerned workman was informed *vide* memo dated 10-1-1997 about the debit balance of his Charge Account No. S.B. No. 1275 with a request to make suitable arrangement for payment of the outstanding amount and reminders were also issued to him for payment of the aforesaid outstanding amount *vide* memos. dated 5-2-1997 and 7-2-1997, but he did not make any arrangement to pay off the entire amount in the said charge account. By reason of the aforesaid acts of misconduct the Chief Manager (IL) the disciplinary authority issued a memorandum dated 13-11-1997 along with the chargesheet of the same date mentioning therein that if the said act was proved, the same would amount to gross misconduct in

terms of Clause 10.5 (j) of the Bipartite Settlement dated 19-10-1966. By the said memorandum dated 13-11-1997 the disciplinary authority appointed the Enquiry Officer to enquire into the charges levelled against the concerned workman. The workman was informed that he may bring with him a defence representative. The Enquiry Officer conducted the enquiry on two dates, i.e., 30-12-1997 and 14-1-2009. On the date of preliminary hearing of the enquiry held on 30-12-1997 the workman concerned accepted the charge of incurring liability through his India Card but expressed his reservations about the correctness of the amount of liability as mentioned in the chargesheet dated 13-11-1997. The Presenting Officer produced some papers which were marked as M.E.—1 to M.E.—6. During the enquiry held on 14-1-1998 the workman concerned and his defence representative confirmed having tallied the aforesaid management exhibits with their own records and found them to be correct. The concerned workman himself accepted the charges and confirmed the amount of Rs. 2,11,760.15p incurred by him through his India Card to be correct. The Presenting Officer and also the Defence Representative of the concerned workman submitted their respective written briefs before the Enquiry Officer. The Enquiry Officer gave his findings on 6-3-1998 holding the concerned workman guilty of the charges levelled against him and submitted it along with all other related papers to the Disciplinary Authority. The Disciplinary Authority after going through the entire enquiry findings and the oral/documentary evidence produced in the enquiry and considering the fact of voluntary and unconditional admission of the workman of the charges leveled against him in this regard agreed with the findings of the Enquiry Officer. Accordingly by letter dated 25-3-1998 the Disciplinary Authority issued a notice to the concerned workman for showing cause as to why the proposed punishment of dismissal without notice under Clause 21 (v) (a) of the Bipartite Settlement dated 14-2-1995 should not be imposed upon him. He was also given opportunity in this letter to submit his representation or to personally appear before the Disciplinary Authority to make his submission on the proposed punishment. The concerned workman availed the opportunity of personal hearing before the Disciplinary Authority and he has also gave reply to the said show cause notice by his letter dated 30-3-1998. The Disciplinary Authority, however, by letter dated 31-3-1998 by way of a reasoned order awarded the punishment of dismissal without notice from Bank's service upon the concerned workman in terms of Clause 21 (vi)(a) of the Sixth Bipartite Settlement dated 14-2-1995 with immediate effect. The workman concerned being aggrieved with the said order of punishment preferred an appeal before the Appellate Authority who after giving a personal hearing to the workman, by a reasoned order confirmed the order of punishment that was awarded by the Disciplinary Authority. It is stated by the management that the order of dismissal from service against the concerned workman was

duly passed after holding a proper enquiry in which he duly participated and he was also afforded all reasonable opportunity to defend himself and during the enquiry principles of natural justice were fully adhered to.

It is, however, prayed by the management that in the event the Tribunal comes to a conclusion that the domestic enquiry as held in this case is not fair, proper and valid, leave may be granted to the management to adduce fresh and/or additional evidence to justify the action of punishment inflicted on the workman concerned.

The management has denied the contentions of the workman as made by him in his statement of claims in *seriatim*. It is stated that the concerned workman contravened the terms and conditions applicable to India Card holders by not meeting his liabilities within the stipulated time despite several reminders given to him to that effect which resulted in initiation of disciplinary proceeding which culminated in his dismissal from service. According to the management the act and omission on the part of the workman was a gross misconduct under para 19.5 (j) of the Bipartite Settlement of 19-10-1966. Management has referred to the guidelines as contained in Branch Circular No. 91/20 dated 3-10-1997 wherein it is clearly mentioned that the staff, as the India Card user must make available sufficient balance in the charged account to meet drawings against the said card, failing which the staff member is liable for disciplinary action. It is further stated that non-payment of personal loan, if any, by any employee which empowers the Bank to adjust the loaned amount cannot be equated with the liabilities of the workman concerned that arose for his unauthorized use of the money under the India Card facility given to him. According to the Bank mere realization of the entire amount from the workman does not stand to reason that the punishment imposed upon him was unwarranted and unlawful. It is categorically stated that the chargesheet to the workman was issued after the issuance of the guidelines as contained in Circular No. 91/20 dated 3-5-1997 and as such the circular is fully applicable to him. It is accordingly stated that the workman is not entitled to any relief.

4. The workman concerned has also filed a rejoinder denying the contentions of the management of the Bank and also reiterating his claims and contentions as contained in his statement of claim.

5. In view of the settled principle of law, as the correctness, legality or validity of the enquiry was challenged on behalf of the workman, which was defended by the management, it was decided to have a preliminary hearing on the point of validity of the enquiry and accordingly evidence was ordered to be led and both the parties accordingly led their respective evidence on the point. Thereafter upon hearing both the parties, this Tribunal by an order dated 17th January, 2008 held that the

domestic enquiry as held in this case was prima facie perverse and defective and an opportunity was given to the management to lead evidence in the matter. A liberty was also given to the workman to lead evidence in his defence.

6. In terms of the aforesaid order dated 17th January, 2008 the management exhibited certain documents and also examined one witness in support of its case. The workman, however, choose not to adduce any further evidence in the matter. Out of the documents exhibited on behalf of the management Ext. M-21 is the printed application form for personal/add-on-card of the workman duly filled in; Ext. M-22 is the Statement of Accounts from 01-01-1997 to 03-06-1997 in respect of the workman; Ext. M-23 is a circular letter dated 15th April, 1988 written by the Deputy General Manager of the Bank to all Indian Branches of the Bank regarding credit card scheme of the Bank, i.e., 'Indiacard' and Ext. M-24 is the letter of the workman dated 23-10-1998 addressed to the Chief Manager of the Bank regarding payment of P. F. and gratuity amount.

7. MW-2, Kalachand Bandopadhyay the Chief Manager of Jodhpur Park Branch of the Bank is the witnesses for the management. He has stated that he worked in various capacities in the Bank and was also posted as Chief Manager, Corporate Services Department of Kolkata Zonal Office which handled India Card business of the Bank. He has referred various paragraphs of Ext. 23 regarding the eligibility norms applicable to the staff members of the Bank for issuing Bank's India Card and stated that there is no scope for the staff to utilize any of the Bank's scheme as a customer. He has also referred to paragraphs 17.1 and 17.2 of the circular and stated that the card holder must make sure that there is sufficient balance in the account to meet such debits and in the case the account is overdrawn interest to be charged at commercial rate and it should be adjusted within a maximum period of 15 days. Referring to the Exts. M-22 and M-23 he has stated that it is a serious misconduct on the part of any staff. It is stated by him that as per paragraph 19.5(j) the act of heavy overdrawn is a gross misconduct because in Bank each and every employee has to work with utmost integrity and strictly as per rules laid down by the Bank. Since India Card Rules say a TOD has to be liquidated within 15 days, not doing so and going on creating huge debit balance is definitely a gross misconduct on the part of any staff. It is also prejudicial to the interest of the Bank. According to the witness Ext. W-5 and M-21 are totally different documents. He has further state that Ext. M-18 was issued subsequent to Ext. M-21 when it was observed by the Bank that incidents of misuse of India Card by staff members was on the rise and Ext. M-18 reiterated the provisions of Bank of India Officer Employees as well as Award Staff Employees regarding intiation of disciplinary action for misuse of India Card. He has particularly referred

to paragraph 5 of it and stated that it reiterated that temporary overdraft should not exceed Rs. 5000/- and such overdraft should be cleared within next 15 days or the next salary day whichever is earlier. He has, however, stated that in Ext. M-21 the spending limit is mentioned as Rs. 20000/- against Account No. 1275 and such limit was requested by the applicant. In cross-examination the witness has stated that he was posted as Chief Manager, Corporate Services, Kolkata Zonal Office from 5th June, 2007 to 17th/ 18th October, 2007 and came to know about the facts of the case then and went through the file because India Card matters were dealt by his department. He could not say about the terms and conditions in the form as the same is not mentioned in Ext. M-21, but has stated that this form was in vogue at the time of introducing India Card business by the Bank. He has agreed that all the terms and conditions were not printed on the application form. He, however, has stated that at the time of issue of cards all the applications were appraised about the terms and conditions before getting their applications processed and sanctioned. At a later stage, however, due to operational problem the Bank got the terms and conditions printed on the application form itself. To a specific question the witness has stated that out of Rs. 221000/- the Bank has realized an amount of Rs. 141000/- as interest and he considered it to be a major misconduct on the part of the workman in terms of clause 19.5(j) of the bipartite settlement applicable to him.

8. On the perusal of the aforesaid facts it is evident that the workman concerned has been dismissed from the service by the management of Bank of India as he was found to have misused the facility of India Card which was so given to him by having withdrawn a huge amount which was beyond the spending limit fixed by the Bank to him in this connection. The workman, however, had denied the charges as so framed against him for the misuse of the India Card so issued in his favour and he never had so admitted as per case of the management in this regard. It was also submitted on his behalf that the terms and conditions as laid down about the use of the said India Card did not provide any such action which could be taken against him for holding any such enquiry for termination of his service as it has been so done by the management in this connection against the workman. It has also been submitted on his behalf that since the entire principal amount together with the penal interest thereon has already been realized by the Bank from his terminal benefits there is no question of illegally termination his service on this count. It has also been argued by him that other number of staff members who had been similarly so issued the India Card working in the Bank had withdrawn the amount but no action was ever taken against them like it has been so taken against the workman in this case. To show his bonafide further and the circumstances in which the amount had to be so withdrawn by him was also given by him in his reply to the chargesheet so framed against him in this

connection. According to him he had been subjected to great threat and pressure as put to him by the friends of his brother-in-law who was carrying business in Nepal and in this connection to entertain them in hotels etc., his brother-in-law had been so threatened and also his other family members and so the workman had been forced to use the India Card and the amount had been so withdrawn by him through it under great pressure for that he had also lodged a complaint to the local Police on 4th October, 1996 to give him protection and protection to his family members. A copy of it was also so forwarded to the Bank authorities stating therein about the above facts and to stop India Card facility extended in his favour forthwith. No action however, was taken thereon by any one. The action of the Bank as such is in clear violation of the constitutional guarantee given to a citizen and apart from that it violates the Banking Regulations Act, 1949 and Sastri Award etc. as well in this regard. In this connection it was also argued on his behalf that the charges as so levelled against him under Clause 19.5(j) of the bipartite Settlement for gross misconduct is also not so applicable since the Bank had already got recovered a huge sum of Rs. 1,25,000/- towards penal interest and therefore, the charges could at most have been framed under Clause 19.7(L) to allege minor misconduct only. The so-called circular dated 3rd March, 1997 is not applicable in the case of the workman as the same has been issued long after the incident concerning the case of the workman in this regard. He has also referred to the case of Ved Prakash Gupta Vs. Delton Cable India (P) Ltd. (AIR 1984 SC 914) was also cited to say that the punishment so awarded to the workman in case is shockingly disproportionate regard being had to the charge framed against him and no responsible employer would ever impose punishment of dismissal in like circumstances to the employer, victimization or unfair labour practice could very well be so inferred from the conduct of the management in awarding the extreme punishment of dismissal for a flimsy charge of abuse of some worker or office of the management by the workman. In this case the order of termination of the workman's service was held to be invalid and unsustainable and he was also held to be so entitled to a relief of reinstatement with full back wages and also other benefits so available to him including his continuity of service in this regard.

9. The management, however, has challenged the above claim and contentions so raised by the workman and referred the statement as it was so given by its witness MW-2, Kalachand Bandopadhyay the Chief Manager of Jodhpur Park Branch of the Bank and who has been so acquainted with the India Card business of the Bank from time to time. According to him there is no scope for the staff to utilize any of the Bank's scheme as a customer and the card holder must make sure that there is sufficient balance in the account to meet such debit and in case the amount is overdrawn, interest has to be charged at

commercial rate and it should be adjusted within a maximum period of 15 days. Since the workman according to him did not do so his act of having overdrawn is a gross misconduct on his part as it has also caused a financial loss to the Bank who had suffered it due to said act of the workman by making such withdrawal and overdraft which was beyond the spending limit as it was so provided in his favour through the India Card by the Bank. It was, however, admitted by him in his statement that all the terms and conditions were not so borne out in the application form itself but at the time of issue of the card the persons concerned had been so apprised orally by the authorities. It was also stated by him that out of Rs. 2,21,000/- the Bank had realized a sum of Rs. 1,41,000/- towards interest. In this connection the management has also referred to a decision of the Hon'ble Apex Court in AIR 2003 SC 1571 (Chairman and Managing Director, UCO Bank & Ors. vs. P.C. Kakkar) to say that the Court would not go into the correctness of the choice made by the administrator and substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision making process and not the decision itself and unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court/Tribunal, there is no scope for interference. In a normal course if the punishment imposed is shockingly disproportionate, it would be proper to direct the disciplinary authority or the appellate authority to reconsider the penalty imposed. Another case law was cited by the management, i.e., AIR 1998 SC 2311 (Union Bank of India vs. Vishwa Mohan) to say that Bank Officer alleged to have committed acts of bribery, embezzlement, misappropriation and other acts of unbecoming of a Bank Officer and in case the order of dismissal has been passed against him, there is no question of making any interference with such charges of serious nature. Regarding the scope and jurisdiction of this Tribunal under Section 11A of the Act which could be so acquired by it, he has referred to the case of 2005 Lab. I.C. 1333 (Mahindra & Mahindra vs. N. B. Naravade) wherein the Hon'ble Apex Court has said that :—

"20 It is no doubt true that after introduction of Section 11A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with quantum of punishment awarded by the Management where the concerned workman is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as

to disturb the conscience of the Court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such fact existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A and reduce the punishment."

It has been argued on behalf of the management that it is a gross misconduct as it was so held by the Hon'ble Apex Court in 1999 (4) SCC 759 (State Bank of India & Ors. Vs. T. J. Paul) that proof of actual loss was not necessary to attract this clause, but likelihood of loss was enough to hold an employee guilty as in this case a Bank Officer had been charged to have sanctioned loans without adequate security and without prior approval from the superior authorities which was contrary to departmental instructions. The Enquiry Officer for this found him guilty of the gross misconduct and negligence and he was removed from service. There was no interference of such findings given by the Enquiry Officer and looking at the facts of the case the appellate authority was only directed to consider afresh about the imposition of penalty as it was so prescribed in the rules which could be lesser than loss of job but the finding of misconduct itself was not so found otherwise as it had been so argued therein on behalf of the workman.

10. Considering the aforesaid facts and submissions made on behalf of the either sides it is evident that most of the facts relating to the issue of India Card to the workman and the amount so withdrawn by him and further about the recovery of the entire principal amount together with the penal interest thereon from the workman concerned is an admitted fact to both the sides in this case. From the enquiry report, M-10 as submitted by the Enquiry Officer after conducting the enquiry in this connection it is evident that it did not contain the relevant facts and findings regarding the manner in which the concerned workman had made withdrawal of the amount for which he was allowed by the use of this facility and the Enquiry Officer had only considered his guilt on the basis of his voluntary admission of guilt made by the workman in this connection as mentioned therein for the same. The workman however, has pleaded his bona fide by submitting that the amount whatever had been so withdrawn by him by the use of India Card was due to some unforeseen circumstances which were beyond his control and under threat and pressure as he was victim to threat in this connection. For this a report was also given by him to the Police as well as to the management, Ext. M-2 making prayer therein for cancelling the said facility of India Card as it was so issued in his favour in this regard. No such action, however, had been so taken thereon either by the Police or the Bank authorities in this connection. The amount which had been so withdrawn by him was not at his instance in these circumstances. The management to prove all these facts as

pleaded by the workman to be otherwise by adducing its own evidence but it has not given evidence for that at all. It has only referred to the statement as given by the witness Kalachand Bandopadhyay, MW-2 but he has stated nothing about the aforesaid facts in this connection as to how the plea raised on behalf of the workman to be otherwise based on his statement and the document Ext. M-2 filed by him in this connection. His statement only refers to the terms and conditions for the use of India Card by an employee and about the payment etc. which are to be made by him in this connection as to terms and conditions mentioned therein for this purpose. He also stated that orally the Bank authorities had also told the concerned workman about these terms at the time of issuing the Card as well in this regard. The Xerox copy of the application is also filed by the workman vide Ext. M-21 to say that it did not provide any such terms and conditions therein as it has been so referred to above by the workman vide his own copy of the application filed in this case, i.e. Ext. W-5. This does not contain the entire details about it in this card, however, as on its perusal i.e. at the back of this document Ext. M-21 it is quite blank as it does not contain any such terms and conditions mentioned therein as it were so mentioned for that in the application form Ext. W-5 itself which contain the full terms and conditions to be followed by either side for the India Card as it was so issued by the Bank to the workman in this connection. There is nothing to show it otherwise by management that the said application form for issue of India Card Ext. W-5 was not so in vogue to avail such facility by the bank employees or that the said terms and conditions were not so applicable to them for the use of the India Card during the relevant period. In this connection no other specimen of the application form which contained some other terms and conditions have been on the record by the management alongwith the application so sanctioned of the workman as it was done through this Ext. M-21 which do not contain the terms and conditions to be otherwise so as to disprove the claim and contention of the workman in this regard. There is no evidence to prove the alleged oral instruction that was so given to the workman at the time of issuing the said India Card in his favour vide Ext. M-21. So far as the circular dated 03-05-1997 is concerned it is evident that it was issued subsequently vide Ext. M-18 and so it does not cover the relevant period of the transaction so undertaken by the workman as the card had been of 12.09.1996 in his favour prior to it. The management also did not show that any other case of an employee who also had been issued a card like him and on making an excess withdrawal of the amount like him had been similarly treated by passing any such order of termination as the workman has been so penalized for such use of India Card in this case.

11. Considering all these above facts and circumstances, it is evident that the act done by the workman, i.e., by use of India Card saying it to be a misuse

and also charging him for that as a gross violation of the terms and conditions of the same, it does not appear to be a case of fraud, theft or forgery or any such financial loss to the Bank as the Bank admittedly got realized both the principal sum together with the penal interest @ 2.5% p.m. and there remains nothing to be recovered from the workman in this connection. Clauses 18 and 19 of the terms and conditions as mentioned therein clearly go to show all these about it in clear terms as follows:

"18. In case of direct billing to card holders, payment should reach the Bank before the due date of the bill, otherwise, service charges will be levied at the rate of 2.5% p.m. or part thereof from the date of the bill till the payment is received. In case of persistent default or otherwise if the card holder does not operate his/her card account satisfactorily. The Bank at its discretion will withdraw the card and will put it in the "Hot Card Bulletin". If any ad-on card issued in such account, the same will also be withdrawn and put in the "Hot Card Bulletin".

19. In case the charge account is overdrawn when the amount of the statement is debited to the account, service charges will be levied at the rate of 2.5% per month or such other rate that may be notified by the Bank from time to time, till the overdraft is settled. This temporary overdraft should be adjusted within a maximum period of 15 days."

On its perusal it is evident that there is no spending limit of the amount so mentioned therein and in this connection the workman had been given this facility by providing a spending limit on the basis of the financial information so furnished by him for this purpose. It also provided that service charge @ 2.5% per month was to be charged on the outstanding not paid by the due date and for that admittedly the Bank had already so realized the amount of interest thereon and there had been no such outstanding amount now to be paid by the workman in this connection. These facts as such clearly go to show that the act done by the workman cannot be said to be covered for any such act of committing fraud, forgery, theft etc. by having legally so withdrawn the amount through the use of India Card which admittedly had been so issued by the management to the concerned workman and to other Bank employees who had been so working there during that period. The allegations made against him of misuse is not so substantiated as it was only a case of excessive withdrawal of the amount by him through the facility which was so legally available to him. It was in the nature of a privilege and facilities and benefits given by the Bank to its employees just like giving the facility of House Building Advance, Car Loan etc. The act of the workman clearly is that of an excessive withdrawal so made by him and also not paying the amount back within the stipulated time as per terms and conditions mentioned in the card itself for

this purpose vide Ext. W-5 as it provided the mode of its realization by charging a penal interest thereon and so the workman was clearly liable to pay it and he also had been so asked to pay it and it now stands fully recovered in this regard. It did not provide any such action to be taken for any such violation of the terms and conditions so as to term it as a gross misconduct for which he had been so charged and it led to termination of his services. The workman as such could not have been so charged for any such act saying it to be a gross misconduct as it is so defined in Clause 19.5(j) of the Bipartite Settlement as it reads as under :

"doing any act prejudicial to the interest of the Bank or gross negligence involving or likely to involve the bank in serious loss."

As it provides therein the act of the workman concerned can't be termed as an act prejudicial to the interest of the Bank as the Bank could very well recover the amount whatsoever it was so withdrawn by the workman with the penal interest and as such there was no question of any prejudice to the Bank by the concerned workman accordingly who has been so charged under this head for having withdrawn that much amount as he could very well do it as per terms and conditions mentioned therein for that purpose, though of course, he had to make its repayment accordingly.

12. In some what similar facts and circumstances the Hon'ble Apex Court held that the act of workman did not or could not constitute any such misconduct to entail any punishment to be so imposed upon him in case he has not been able to repay the advance which he took such as House Building Advance etc. In the case of A. L. Kohra v. P.E. Corporation of India Ltd. reported in AIR 1984 SC 1361-1984 LAB I.C. 961 the Hon'ble Apex Court after having considered the facts and circumstances and specially the rules in question found that certain charges framed against the employee concerned was that he failed to repay House Building Advance and Car Advance within the stipulated time, namely within two months from the date of such advance. The Hon'ble Court also found that the rules on the basis of which loans or advances were availed by the employee concerned provided that if such loans or advances were not repaid then interest would be charged as provided in the said rules themselves. In a situation like that the employee could not be charged under the general provisions of misconduct as he was charged. The Hon'ble Court further held that when an employee faces disciplinary proceedings on any alleged misconduct where misconduct when proved entails penal consequences, it is obligatory on the part of the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct. In this case also the charged employee had not been able to repay the advance which

he took as House Building Advance and for the purpose of purchasing a new motorcycle did not actually commit any misconduct within the definition of misconduct in general as the provisions under which such advances were given to the employee and obtained by the employees themselves provided the consequences of not repaying the advance or advances within the stipulated time. The facts of the present case also appear to be more or less similar as in this case also concerned workman admittedly had also been issued the India Card and he could very well avail that, but he had to repay the amount so withdrawn by him and for that the consequences were also provided therein vide Ext. W-5 for making its repayment, i.e., by imposing penal interest for the same which could be realized from him as per those terms and conditions mentioned therein for this purpose i.e. vide Ext. W-5. It provides all these details and consequences arising therefrom and relying on this the Bank also got its recovery i.e. of the principal amount together with the penal interest for the same. The bona fide of the workman was evident as he never so challenged either the withdrawal of the amount so made by him through this card. He had also expressed his commitment to repay it either from his salary, provident fund etc. so what the amount whatsoever was due to be repaid could be so recovered by the Bank who as such had no loss what to say of any gross financial loss which could be so there as defined under Clause 19.5(j) referred to above for this purpose.

13. All these facts as such clearly go to show that the action taken by the management in dismissing the concerned workman from the service for the charges so framed against him were not so called for to initiate any disciplinary proceeding or conducting any such enquiry against him for the withdrawal of the amount by using the India Card as the amount whatsoever was so withdrawn by him could be so recovered as per terms and conditions mentioned in the India Card itself for that purpose. The order of dismissal passed by the management against the workman as such deserves to be set aside.

14. In view of the above the action of the management of Bank of India (Eastern Zone). 5 B.T.M. Sarani, Kolkata- 700001 in dismissing Shri Anjan Lahari, Accounts Clerk from the service is held to be illegal and unjustified. The order of dismissal is accordingly set aside and quashed. The workman is entitled to be reinstated in service from the date of his dismissal and he is also entitled to get half of the back wages.

This is my Award.

C. P. MISHRA, Presiding Officer

Dated, Kolkata,

the 23rd February,

नई दिल्ली, 30 अप्रैल, 2009

का.आ. 1401.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स कलकत्ता शिपिंग एण्ड मैरीन इ.क. (प्रा.) लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 29/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-09 को प्राप्त हुआ था।

[सं. एल-34011/9/2006-आईआर(बी-11)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30th April, 2009

S.O. 1401.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 29/2007) of the Central Government Industrial Tribunal, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Calcutta Shipping & Marine Eng. Co. (P.) Ltd. (Stevedores) and their workmen, which was received by the Central Government on 28-4-09.

[No. L-34011/9/2006-IR(13-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERBAD

Present : Shri Ved Prakash Gaur, Presiding Officer

Dated, the 16th day of February, 2009

Industrial Dispute No. 29/2007

BETWEEN

The General Secretary,
Visakhapatnam Port and Dock Mazdoor Sangh,
H.No. 53-20-2-1, Chaitanyanagar,
Visakhapatnam-530013.

...Petitioner

AND

The Manager,
M/s. Calcutta Shipping & Marine
Engg. Co.(P) Ltd., Stevedores,
C/o Indrani Shipping Agency,
Flat No. 12, Near Slipway Co. Fishing Harbour,
Visakhapatnam-530001

...Respondent

APPEARANCES

For the Petitioner : Nil

For the Respondent : M/s. N. Prabhakara Rao &
K. V. Narayana Murthy,
Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-34011/9/2006-IR(B-II) dated 28-5-2007 referred the following dispute under Section 10(1) (d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Calcutta Shipping & Marine Engg. Co. (P) Ltd., (Stevedores) and their workmen. The reference is :

SCHEDULE

“Whether the demand of the Visakhapatnam Port & Dock Mazdoor Sangh for payment of retrenchment compensation amount to their member workman viz. S/Sh. B. Ram Babu and 3 others, Ex-Rowing Boat Workers (as per the list), according to their eligibility by the management of M/s. Calcutta Shipping & Marine Engg. Co. (P) Ltd., Visakhapatnam (engaged in Stevedoring works at Visakhapatnam Port Area) is legal and/or justified? If not, to what relief the concerned union is entitled?”

The reference is numbered in this Tribunal as I.D. No. 29/2007 and notices issued to the parties.

2. On 16-2-2009, both parties absent. Petitioner has not filed claim statement after appearance. As such, this case is closed. Hence, a Nil Award is passed in absence of claim statement. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 16th day of February, 2009.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner : Witnesses examined for the Respondent :

NIL

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 30 अप्रैल, 2009

का.आ. 1402.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कैनरा बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 129/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-2009 को प्राप्त हुआ था।

[सं. एल-12012/128/2004-आईआर(बी-11)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30th April, 2009

S.O. 1402.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 129/2004) of the Central Government Industrial Tribunal, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Canara Bank and their workmen, which was received by the Central Government on 28-4-2009.

[No. L-12012/128/2004-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR AT
HYDERABAD**

Present : Shri Ved Prakash Gaur, Presiding Officer

Dated the 20th day of February, 2009

Industrial Dispute No. 129/2004

BETWEEN

Sri P. Naga Mallaiah,
Guntur Bapanaiah Nagar,
D.No. 41-I/15/5, Krishna Lanka,
Vijayawada

....Petitioner

AND

1. The Branch Manager,
Canara Bank,
Gandhinagar Branch,
Vijayawada.

2. The Management,
Canara Bank,
Head Office,
Bangalore-560 060.

...Respondents

APPEARANCES

For the Petitioner : M/s. Vidya Sagar, K. Udaya Sri, P.
Sudheer Rao & D. Madhusudhan,
Advocates

For the Respondent : Sri P. Suresh, Advocate.

AWARD

1. The Government of India, Ministry of Labour by its order No. L-12012/128/2004-IR(B-II) dated 29-9-2004 referred the following dispute under Section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Canara Bank and their workmen. The reference is,—

“Whether the action of the Management of Canara Bank in imposing the punishment of compulsory retirement on Shri P. Naga Malliah is legal and justified? If not, to what relief the workman is entitled to?”

2. The case registered after receipt of reference and notices were issued to the parties. The Petitioner has submitted his claim statement stating therein that he joined the services of the Respondent bank as peon at its Gandhinagar branch of Vijayawada on 31-3-1984. Subsequently, he was transferred to currency chest branch in the year 1987. In the year 2000 he was promoted to the post of Daftari, since then, the Petitioner was discharging his duties to the entire satisfaction of his superiors. It has further been stated that while working in Gandhinagar branch, the Petitioner availed a loan of Rs. 20,000 from Sri Mahalakshmi Mutually Aided Cooperative Thrift Society which has been repaid by him and his account was closed by the society after receiving the full amount on 21-3-2002. The society *vide* letter dated 26-3-2002 informed to Petitioner that his account has been closed after receipt of full amount. It was alleged by the Respondent management that Petitioner has availed the loan of Rs. 20,000 from Sri Mahalakshmi Mutually Aided Cooperative Thrift Society by producing a bogus and inflated salary certificate and has also submitted bogus salary certificate of his sureties. That the allegations made by the Respondent against the Petitioner is totally false, incorrect and without any base. Thereupon an investigation was ordered and Sri D. V. N. Prasad was ordered to investigate the matter and submit the report. Accordingly, Sri D. V. N. Prasad has submitted investigation report holding therein that the Petitioner is guilty of the allegations made against him. In the investigation report the investigating officer has stated that the Petitioner confessed the allegations made against him. The Petitioner has stated that he was forced by the bank officials to confess his guilt. Further, basing on the investigation report a chargesheet was issued on 18-6-2002 alleging that the Petitioner availed the loan of

Rs. 20,000 from Sri Mahalakshmi Mutually Aided Cooperative Thrift Society by producing bogus salary certificate. It has also been alleged against the Petitioner that he introduced the account holder of account No. SB 16454 on 30-10-2000 and has also recommended the Manager to sanction the loan. The Petitioner denied the allegations made against him and submitted his explanation to the chargesheet. Not being satisfied with explanation of the Petitioner the Respondent ordered domestic enquiry and Enquiry Officer was appointed who conducted the enquiry and submitted his findings on 13-12-2002. Thereafter, the Deputy General Manager issued proceeding No. HDAC/701/E-37/2002-03 dated 28-2-2003 imposing the punishment of compulsory retirement invoking Chapter-XI Regulation IV Clause B of Canara Bank Service code. Against the said punishment order, Petitioner an appeal to General Manager and Appellate Authority on 9-4-2003 which was rejected by the Appellate Authority *vide* proceeding dated 5-9-2003. Aggrieved by the same, Petitioner made a representation to the Assistant Labour Commissioner (C) u/s 2K of the Industrial Disputes Act, 1947. The Conciliation Officer conducted joint meetings of Petitioner and the Respondent but the same ended in failure. Thereafter, the Conciliation Officer sent a report to the Central Government which has made this reference to this court for adjudication. It has further been submitted by the Petitioner that the Appellate Authority has failed to appreciate the preliminary objection raised by the Petitioner, that the chargesheet suffers from major short comings like using the unknown cause to charge the employee. The same objection was raised before the Enquiry Officer but the Enquiry Officer proceeded with the enquiry thereby violated the principles of natural justice. During the course of enquiry the alleged bogus salary certificate was not produced in original nor it was produced before the witnesses for confirming that bogus certificate only a xerox copy of the salary certificate was produced during the course of enquiry which could not be taken in evidence. As regards, the allegations made against the Petitioner that he has recommended to the Manager to sanction loan to Smt. N. Aruna Kumari, *prima facie* there was no evidence to prove that Petitioner has made any recommendation for sanction of loan to Smt. N. Aruna Kumari. The sanction was done by the Manager of the Gandhinagar branch. Incidentally the loan application and sanction order does not bear the loan number of sanctioning authority's authentication, branch acknowledgement etc. This shows the lapses on the part of the branch authorities. The evidence of MW1 has been misread by the Enquiry Officer who has stated that no loss has been caused to the financial institution. MW3 and MW4 has stated before the Enquiry Officer that the alleged salary certificate bears nobody's signature of their branch. The Petitioner has paid entire loan amount, no financial loss has been caused to the loan sanctioning authority, as such, punishment inflicted on the Petitioner is disproportionate to the misconduct

committed by the Petitioner. The Petitioner has submitted that the retrenchment order dated 20-2-2003 be held to be illegal, arbitrary and unjust and be quashed directing the Respondent to reinstate the Petitioner into service with full back wages and continuity of service.

3. Respondents filed their counter statement. They have stated that the Petitioner was working in their office as stated by him while working in the Gandhinagar branch on 13-2-2002, a letter was received from Sri Mahalakshmi Mutually Aided Cooperative Thrift Society that the Petitioner has availed a loan and failed to repay the same. When one of the branch official contacted the society the, the society handed over the salary certificate to the official of the branch informing the official that the salary certificate was given by the Petitioner at the time of applying for the loan. A bare look at the certificates show that the signature of the branch official was forged on the salary certificate and the salary of the Petitioner was shown at a higher end. During the course of enquiry, the employee of the society identified the loan application and salary certificate submitted by the Petitioner. Management witness during the course of enquiry has deposed that salary certificate was given by the Petitioner on his volition after discussing with the union representatives. It has further been submitted by the Respondent that the Petitioner introduced one Smt. N. Aruna Kumari for opening her account on 30-10-2000 who applied for a loan on 2-11-2000. When inquired it was found that he had submitted the forged salary certificate. It has further been informed by the department that he was in the habit of producing fake and fabricated salary certificate. Being the employee of a Nationalized Bank, the Petitioner should be honest and should discharge his duties to the utmost satisfaction of his superiors which he failed to do. The Petitioner has acted contrary to the regulation of Canara Bank more particularly regulation 2(A) of the Bank. The Petitioner was given full opportunity during the course of enquiry, he participated in the enquiry and utilized full opportunity given to him. No violation was done on the part of the management, no prejudice has been caused to the Petitioner. Enquiry Officer has found the Petitioner guilty of the charges leveled against him and submitted his report considering the gravity of the charges leveled against the Petitioner and report of the Enquiry Officer holding the Petitioner guilty, punishment of compulsory retirement has been inflicted on the Petitioner which commensurate with the gravity of the charge proved against the Petitioner. Petitioner is not entitled for any relief from this court and his claim deserves to be dismissed.

4. Both sides were given opportunity to produce their respective evidencer. The Petitioner has filed letter dated 26-3-2002 of Sri Mahalakshmi Mutually Aided Cooperative Thrift Society wherein the Chief Executive Officer of the society has given a certificate that P. Nagamalliah, Attender, Canara Bank, the society has

closed his loan account on 21-3-2002. A copy of which has been addressed to the Manager, Canara Bank, Gandhinagar Branch. Xerox copy of the written brief submitted by I. Prabhakar Rao, defence Representative during the enquiry proceedings. Xerox copy of the order of the Disciplinary Authority dated 28-2-2003. Copy of the explanation submitted by the Petitioner to the General Manager & Appellate Authority and proceeding of the Dy. General Manager upholding the order of compulsory retirement and rejecting the appeal of the Petitioner.

5. The Respondent's side has filed documents relating to the domestic enquiry which runs in 26 pages. None of the parties have filed oral evidence before this Court. Written arguments has been submitted on behalf of the both parties and the parties requested that the case be decided on the basis of the written arguments.

6. I have gone through the claim statement and counter submitted on behalf of the parties and their respective documentary evidence and written argument.

7. From the perusal of the record it appears that my Learned Predecessor has heard both the parties on the question of validity of domestic enquiry and he has passed a detailed order holding the validity of the domestic enquiry in favour of the management by order dated 14-5-2007.

8. It has been submitted through the written argument by the Petitioner that the Respondent management has not been able to prove its case during the course of domestic enquiry before the Enquiry Officer. But this reference has been received by this court U/s 10(1) of Industrial Disputes Act, 1947. It was the duty of the Petitioner to prove his allegations by his oral or documentary evidence before this tribunal. From the record of this case it appears that the Petitioner has not taken pains nor he has mustered the courage to file his own affidavit nor he has examined himself before this tribunal nor has produced himself for cross-examination from Respondent's side. I have gone through the proceeding taken before the Enquiry Officer where specific charges has been leveled against delinquent employee. It shows that the delinquent employee has participated in the enquiry proceedings. The enquiry file and the report shows that the delinquent employee has admitted during the course of enquiry that he has prepared the inflated and bogus salary certificate of himself and Sri Prabhakar Rao, sub-staff of currency Chest for obtaining loan from Sri Mahalakshmi Mutually Aided Cooperative Thrift Society. It has also been mentioned in the enquiry proceeding file that the delinquent employee has confirmed that he has affixed office rubber stamp of both Gandhinagar branch and currency Chest branch Vijayawada. It has also been found during the course of enquiry that the delinquent employee has introduced

Smt. N. Aruna Kumari for opening her savings bank account and has also recommended for the sanction of the loan to her. Further, it has been found during the course of enquiry that Smt. N. Aruna Kumari is also in the habit of taking loans on the basis of forged and bogus salary certificates. The take home salary of the delinquent employee was nil. However, the delinquent employee has fabricated his salary certificate showing gross salary to be Rs. 9089.22 ps out of which deductions of Rs. 1872.10 ps. and take home salary of Rs. 7217.27 ps whereas actual deductions are Rs. 6967.47 ps and take home salary is Nil. It shows that while taking loan from the Sri Mahalakshmi Mutually Aided Cooperative Thrift Society the Petitioner of this case has produced a fabricated salary certificate of his own and during the course of enquiry he has admitted that he has fabricated bogus salary certificate for procuring a loan of Rs. 20000. Thus, the contention of Petitioner's counsel and that of the Petitioner that during the investigation the Petitioner was forced to admit his guilt is completely baseless and false just to gain favour from this tribunal. Had the Petitioner been forced by any of the employees of the bank, or the management of this case, he should have made complaint to this effect to his superiors. But the enquiry record shows that the Petitioner has produced his salary certificate for the month of February, 2001 wherein his basic has been shown as Rs. 4770, Special pay Rs. 140, DA-Rs. 3759.42 ps. HRS-Rs. 369.80 ps, conveyance allowance - Rs. 50 total of Rs. 9089.22 and deductions of Rs. 1872.10. Net amount payable in the month of March is shown as Rs. 7217.27. During the course of enquiry, the applicant accepted that, for opening of a bank account of Smt. N. Aruna Kumar was also produced wherein the name of the introductory is written as P. Naga Mallaiah. He has also introduced Sri M. Udaya Bhaskara Rao for opening account. This shows that he was in the habit of introducing persons for opening bank account. The enquiry proceeding shows that all the documents were shown to him during the course of enquiry and he has been given ample opportunity to cross-examine the witnesses produced by the management. His statement was recorded by the Enquiry Officer, Enquiry Officer has shown MEX.2 to the Petitioner of this case P. Naga Mallaiah and asked why has given to the society, then he has replied that B.N.V. Prasad came for conducting investigations and informed that he has given MEX.2 otherwise he will lose his job. He has admitted that he has availed loan from the Sri Mahalakshmi Mutually Aided Cooperative Thrift Society, forged salary certificate was shown to him. He has replied that he has not submitted this certificate. It has been asked from him whether he was in the habit of signing blank agreements, then he has replied normally he was not in the habit of signing blank agreement but, in this case he has signed a blank

agreement. This shows that the delinquent employee has admitted during the investigation that he submitted the forged salary certificate on the basis of which he obtained the loan and when the society informed the bank that he has not repaid the loan, the matter was opened and came to the light of the bank authority. Thus, the contention and argument of the Petitioner's counsel that Petitioner has not admitted his guilt but he was forced by the management authorities to admit his guilt is not supported by cogent evidence and such contention can not be relied upon and no credit can be given to the argument advanced on behalf of the Petitioner. The enquiry file shows that there was order from the court of Civil Jr. Judge, Vijayawada for recovery of sum of several amounts pending before the Court of Addl. Jr. Civil Judge, Vijayawada and Principal Sr. Civil Judge, Machilipatnam. Meaning thereby that the Petitioner was in habit of taking loan and not making payment of those loans. Thus, from the enquiry record, it is amply proved that the Petitioner has taken loan from Sri Mahalakshmi Mutually Aided Cooperative Thrift Society by producing a false salary certificate which has been found to be forged and the Respondent management has not committed any illegality or irregularity in holding the Petitioner guilty of producing fake and bogus salary certificate for obtaining a loan from Sri Mahalakshmi Mutually Aided Cooperative Thrift Society and thereby the Petitioner has violated the provisions of Chapter -XI Regulation-IV Clause B of Canara Bank Service code. Thus, the punishment inflicted on the Petitioner in this case is according to the misbehaviour committed by the Petitioner and no interference can be done by this tribunal and the quantum of punishment awarded by the management to the Petitioner is not disproportionate. The Petitioner is not entitled to any relief under the schedule of the reference and it deserves to be dismissed with costs to the Respondent.

Accordingly, an Award is passed. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 20th day of February, 2009.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL
Documents marked for the Petitioner	
NIL	
Documents marked for the Respondent	
NIL	

नई दिल्ली, 30 अप्रैल, 2009

का. आ. 1403.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (संदर्भ संख्या 25/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-2009 को प्राप्त हुआ था।

[सं. एल-12012/39/2001-आई आर (बी-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30th April, 2009

S.O. 1403.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2001) of the Central Government Industrial Tribunal, Nagpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Dena Bank and their workman, which was received by the Central Government on 28-4-2009.

[No. L-12012/39/2001-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI A.N. YADAV, PRESIDING
OFFICER, CGIT-CUM-LABOUR COURT,
NAGPUR**

Case No. CGIT/NGP/26/2001

Dated 6-2-2009

Petitioner/Party No. 1 :

Shri Rajendera Ramchandra Katkar,
C/o Shri M. Piraji, Sanmitra Colony,
Near Mahatma Gandhi Vidyalaya,
Mudkhed, Tah. Mudkhed, Dist. Nanded,
Nanded-431806

Versus

Respondent/Party No. 2 :

The Branch Manager,
Dena Bank, Branch Mudkhed,
Tah. Mudkhed,
Nanded-431806

AWARD

(Dated 6th February, 2009)

1. The Central Government after satisfying the existence of dispute between Shri Rajendra Ramchandra Katkar, C/o Shri M. Piraji, Sanmitra Colony, Near Mahatma

Gandhi Vidyalaya, Mudkhed, Tah. Mudkhed, Dist. Nanded, Nanded (Party No. 1) and the Branch Manager, Dena Bank, Branch Mudkhed, Tah. Mudkhed, Nanded (Party No. 2) referred the same for adjudication to this Tribunal vide its letter No. L-12012/47/2001-IR(B-II) dated 18-6-2001 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947). with the following schedule.

2. "Whether the action of the management of Dena Bank represented by (i) The Asstt. General Manager, Nagpur Region, Nagpur (ii) The Branch Manager, Branch Mudkhed, Distt-Nanded (M.S.) in terminating the services of Shri Rajendra Ramchandra Katkar is legal and justified? If not, what relief the said workman is entitled to and from what date?"

3. The reference came up for hearing on 4-2-2009 on which the Petitioner and his Counsel were absent. The counsel for Respondent was present. The Petitioner is not attending the case since last one year. The case is pending for management cross. I do not think it proper to continue it on the same stage years together. It seems that the Petitioner is not interested in prosecuting the case. In the circumstances, no purpose will be served in continuing the case, hence it dismissed for the default of the Petitioner and pass the negative award that he is not entitled for any relief.

Date 6-2-2009

A.N. YADAV, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2009

का. आ. 1404.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. I, धनबाद के पंचाट (संदर्भ संख्या 99/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-2009 को प्राप्त हुआ था।

[सं. एल-12011/94/2003-आई आर (बी-11)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30th April, 2009

S.O. 1404.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 99/2003) of the Central Government Industrial Tribunal, No. I, Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 28-4-2009.

[No. L-12011/94/2003-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference U/s. 10(1)(d)(2A) of I.D. Act.

Reference No. 99 of 2003

Parties :

Employers in relation to the
Management of Syndicate Bank,
Denapur.

AND

Their workman

Present :

Shri H.M. Singh, Presiding Officer.

APPEARANCES

For the Employers : Shri Sekhar Sharma, Advocate.

For the Workman : Shri Prabhat Chowdhury, State
Secretary.

State : Bihar. Industry : Bank.

Dated, the 23rd February, 2009.

AWARD

By Order No. L-12011/94/2003-IR (B-II) dated 15-9-2003 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by Clause (d) of sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of Syndicate Bank, Danapur Branch, Patna in not regularising the service of Shri Bhup Narayan, is correct and legally valid? If not, to what relief the workman is entitled?”

2. Both the parties have settled their dispute amicably outside the Court. A memorandum of settlement has been filed duly signed by both the parties. I have gone through the terms of settlement and find that the settlement is fair and proper.

3. Accordingly, I pass an award in terms of settlement which shall form part of the Award.

Date 6-2-2009.

H.M. SINGH, Presiding Officer

Ref. No. 99 of 2003

FORM—H

Memorandum of Settlement Arrived at under Section 12(3) of the Industrial Dispute, Act, 1947 between the Management of Syndicate Bank and their workman represented by Syndicate Bank Employees Union before the Presiding Officer, Central Government Industrial Tribunal No. 1, Dhanbad on 5-2-2009

Parties of the Settlement :

Representing the Management :

Sri Agasti Jal,
Senior Manager,
Syndicate Bank,
Regional Office, Patna

Representing the Union/workman :

Sri Prabhat Choudhary,
State Secretary, S.B.E.U.,
Bihar State Committee

Short Recital of the Case

The State Secretary, S.B.E.U., Bihar State Committee had raised an industrial dispute over alleged denial of regularization of Sri Bhup Narayan Rai, Sri Sikandar Ram and Sri Krishna Prasad working in different branches of Syndicate Bank and matter was referred for adjudication in this Tribunal. In course of hearing both the parties agreed to settle the dispute on the following terms :

TERMS OF SETTLEMENT

It is agreed between both the parties that :

- (1) The following Part Time Sweepers have been regularized from the date mentioned against their names :

Sl. No.	Case No.	Name of the Candidates	Date of Regularisation	Posted to Branch
01	99/2003	Bhup Narayan Rai	02-04-2007	Danapur Niyamat
02	101/2003	Sikandar Ram	02-12-2007	Arrah

- (2) The Management agrees to regularize the services of Sri Krishna Prasad as Part Time Sweeper at their newly opened branch Bihar Sharif where he has already joined on 15-01-2009 being the date of opening of the said branch. The Union also agrees with the same. In case No. 100/2003.
- (3) The Union has requested for inclusion of temporary service of the above Part Time Sweepers into permanent service of the Bank in tune with the understanding reached with the management

held at Manipal on 1—3rd September, 1983 as well as the provision of the Bipartite Settlement in this regard.

The Management agreed to look into the matter as per the guidelines of the Bank.

Signed By :

Representing the Management Sd/-	Representing the Union/ Workmen Sd/-
Sri Agasti Jal Senior Manager Syndicate Bank Regional Office, Patna	Sri Prabhat Choudhary State Secretary S.B.E.U. Bihar State Committee

नई दिल्ली, 30 अप्रैल, 2009

का. आ. 1405.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक ऑफ इण्डिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 204/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-2009 को प्राप्त हुआ था।

[सं. एल-12012/63/2003-आई आर (बी-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30th April, 2009

S.O. 1405.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 204/2003) of the Central Government Industrial Tribunal, Nagpur now as shown in the Annexure, in the Industrial Dispute between the employees in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 28-4-2009.

[No. L-12012/63/2003-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI A.N. YADAV, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/204/2003

Dated 14-2-2009

Petitioner :

Regional Manager Central Bank of India,
Regional Office-5-57, 2 New Osman Pura,
Aurangabad 431005

....Party No. 1

Versus

Respondent :

Sh. Gangadhar S/o Dhondiappa Mahajan,
R/o Pore Complex Barsi Road,
Opposite Hero Honda,
Show Room Near Balaji Automobiles,
Latur Maharashtra State.

....Party No. 2

AWARD

(Dated 14th February, 2009)

1. The Central Government after satisfying the existence of dispute between The Regional Manager Central Bank of India Regional Office 5-57, 2 New Osman Pura Aurangabad 431005 Party No. 1 and Sh Gangadhar S/o Dhondiappa Mahajan R/o Pore Complex Barsi Road Opposite Hero Honda Show Room Near Balaji Automobiles Latur Maharashtra State Party No. 2 in exercise of the Powers conferred by clause (d) of sub section (2A) of section 10 of Industrial Dispute Act, 1947 [14 of 1947] referred the same for adjudication to this Tribunal vide its Letter No. L-12012/63/2003-IR (B-II) dt. 25-7-2003 with the following schedule :

2. "Whether the action of the management Central Bank of India Aurangabad (MS) Region in awarding the punishment of dismissal from service W.E. from 10-12-1985 to Shri Gajanan Dhondiappa Mahajan Clerk Latur Branch is justified? If not what relief the workman concerned is entitled to?"

3. I have already recorded the findings that the enquiry was proper legal, proper and in accordance with the principle of natural justice. Now the question to for consideration is as to whether the findings of the enquiry officer are perverse and whether the punishment is disproportionate to alleged Misconduct? I have heard the counsels and perused the record. The petitioner examined himself and the on behalf of the Management its manager Shri Shah has been examined. The allegations against the petitioner Mahajan were that he forged the signature of one account holder withdrew the amount of Rs. 15000 on 25-5-81 from the Account No. 965 of Bhanudas Eknath. He took and converted it by taking away MMDC receipt. He also forged the signatures of Bhanudas on the relative forms. Again on 30-5-1981 on the basis of the same receipt raised the loan of Rs. 11000 and took away the cash. Then on 5-12-81 forging the signature of Bhanudas he managed to get premature payment of Rs. 3414.97. Saying that Bhanudas Eknath was ill and unable to come to the Bank. On 5-2-83 Mahajan produced withdrawal form by forging signatures of Bhanudas. Withdrew the amount of Rs. 3400. All the above acts amounts to mis conducts under Para No. 19.5 (J) and 19.7 (a) of the bipartite settlement. Though the Petitioner calls the findings of the enquiry officer as perverse no specific there is any specific pleadings as well as evidence to show any perversity. The findings are mostly based on the documentary evidence. It submitted that the work was carried out with the consent of Bhanudas Eknath. Account holder and petitioner was made scape goat. From the Evidence it is clear that the brother of the petitioner paid the amount of Rs. 18000 to Bhanudas, due to which in fact he turned hostile. The documents are clear enough to prove the forgery. More over petitioner never denied the forgery. He claims to done it with the consent of Bhanudas. It is difficult to digest that any person will consent to forge

his signature. Besides withdrawal form he forged on related form also there is evidence to prove it. Much has been said about non receipt of the documents but it is fact that he was having copies of all documents before starting the enquiry. There is nothing to show any prejudice is caused. It seems that the findings of the enquiry office are based on the evidence they can be said as perverse.

4. The same thing is in respect of the punishment. The petitioner has cheated the bank it has caused stigma on the reputation of the Bank is criminal act. No doubt he is acquitted by the Criminal Court but it will not affect the order of dismissal as well as awarded Punishment. It will be difficult to the Bank to continue him in the service. In fact the bank must have lost the confidence in him. the dismissal was the only proper punishment and the authority has rightly awarded it. It is not at all disproportionate much less shockingly disproportionate. Hence this negative/dismissal award.

Date 14-2-2009

A.N. YADAV, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2009

का. आ. 1406.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सरत चटर्जी एण्ड कम्पनी (विशाखापट्टनम) प्राइवेट लिमिटेड के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 46/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-2009 को प्राप्त हुआ था।

[सं. एल-34011/6/2006-आई. आर. (बी.-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30th April, 2009

S.O. 1406.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 46/2007) of the Central Government Industrial Tribunal, Hyderabad now as shown in the Annexure, in the Industrial Dispute between the employees in relation to the management of M/s Sarat Chatterjee & Co. (Visakhapatnam) Pvt. Ltd. and their workman, which was received by the Central Government on 28-4-2009.

[No. L-34011/6/2006-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT:

Shri Ved Parkash Gaur, Presiding Officer

Dated the 13th day of February, 2009

Industrial Dispute No. 46/2007

BETWEEN:

The General Secretary,
Visakha Stevedore Staff & Workers' Union,
(INTUC) D. No. 44-1-26/1,
Kailasapuram Road,
Visakhapatnam—530024 ... Petitioner

AND

The General Manager,
M/s Sarat Chatterjee & Co.
(Visakhapatnam) Pvt. Ltd.,
28-2-47, Dasapalla Centre, Suryabagh,
Visakhapatnam-530020 ... Respondent

APPEARANCES

For the Petitioner : Nil

For the Respondent : Sri B. Raghava Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-34011/6/2006-IR (B-II) dated 10-9-2007 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s Sarat Chatterjee & Co. (Visakhapatnam) Pvt. Ltd., and their workman. The reference is:

SCHEDULE

“Whether the action of the management of M/s Sarat Chatterjee & Co. (Visakhapatnam) Pvt. Ltd., Visakhapatnam in terminating the services of Shri V. Durga Prasad and 6 others (as per list) in particular and S/Shri G. Suryanarayana and 16 others (as per list) in general, without paying the retrenchment compensation as required under the provisions of Section 25F of the Industrial Disputes Act, is legal and/or justified? If not, to what relief the concerned member workmen of Visakha Stevedore Staff and Workers Union, Visakhapatnam are entitled?”

The reference is numbered in this Tribunal as I.D. No. 46/2007 and notices issued to the parties.

2. On 13-2-2009, Petitioner is absent while Respondent is present. Petitioner has not filed claim statement for more than one and half years. As such, this case is closed for want of claim statement. Hence, a Nil Award is passed in absence of claim statement. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 13th day of February, 2009.

VED PARKASH GAUR, Presiding Officer

Appendix of Evidence

Witnesses examined for the Petitioner Witnesses examined for the Respondent

NIL

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 30 अप्रैल, 2009

का. आ. 1407.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 67/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-2009 को प्राप्त हुआ था।

[सं. एल-12012/92/92-आई आर (बी-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30th April, 2009

S.O. 1407.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 67/2003) of the Central Government Industrial Tribunal, Nagpur, now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 28-4-2009.

[No. L-12012/92/92-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI A.N. YADAV, PRESIDING
OFFICER, CGIT-CUM-LABOUR COURT,
NAGPUR**

Case No. CGIT/NGP/67/2003

Dated 3-3-2009

Petitioner/Party No. 1 :

The Secretary,
All India Bank of Baroda Employees Union,
House No. 542, Dr. Munje Marg, Congress Nagar,
Nagpur-440012
(on behalf of Shri N.B. Phillora)

*Versus***Respondent/Party No. 2 :**

The Regional Manager,
Bank of Baroda,
West High Court Road, Dharampeth,
Nagpur-440012

AWARD

(Dated 3rd March, 2009)

1. The Central Government after satisfying the existence of dispute between the Secretary, All India Bank of Baroda Employees Union, House No. 542, Dr. Munje Marg, Congress Nagar, Nagpur (Party No. 1) and the Regional Manager, Bank of Baroda, West High Court Road, Dharampeth, Nagpur (Party No. 2) referred the same for adjudication to this Tribunal vide its letter No. L-12012/92/92-IR (B-II) dated 31-8-1992 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) with the following schedule.

2. "Whether the action of the management of Bank of Baroda in appointing S/Sh. N.B. Phillora and S.R. Deshpande as Tellers, in spite of their having been earlier debarred under clause 7(2)(c) of the Bipartite Settlement dt. 18-8-84, is justified? If not, to what relief Sh. V.N. Vaze is entitled?"

3. The reference came up for hearing on 31-8-2005. On perusal of Rojnama, it seems that the reference is received initially to the CGIT, Jabalpur in the year 1992. After the transfer of reference to this Tribunal, the notice were issued to both the parties on 23-6-2005 as per the Rojnama. The Petitioner has filed the Vakalatnama on 31-8-2005. The management representative is attending the Court. The Petitioner and his counsel are not attending the Court since 9-3-2006. Also he has not even filed a statement of claim. Today also the representative of the management is present and the Petitioner and his counsel absent. The Petitioner has not yet filed an affidavit. No reason for adjourning the reference for the presence of Petitioner only. It appears that he is not interested to prosecute the case and hence it is dismissed for the default. Hence this negative award.

Date : 3-3-2009.

A.N. YADAV, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2009

का. आ. 1408.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. I, धनबाद के पंचाट (संदर्भ संख्या 100/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-2009 को प्राप्त हुआ था।

[सं. एल-12011/95/2003-आई आर (बी-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30th April, 2009

S.O. 1408.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 100/2003) of the Central Government Industrial Tribunal, No. I,

Dhanbad now as shown in the Annexure, in the industrial dispute between the employees in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 28-4-2009.

[No. L-12011/95/2003-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference U/s. 10(1)(d)(2A) of I.D. Act.

Reference No. 100 of 2003

Parties :

Employers in relation to the
Management of Syndicate Bank,
Gaya Branch, Bihar.

Vs.

Their workman

Present :

Shri H.M. Singh, Presiding Officer

APPEARANCES

For the Employers : Shri Sekher Sharma, Advocate.
For the Workman : Shri Prabhat Chowdhury, State Secretary.
State : Bihar. Industry : Bank.
Dated, the February, 2009.

AWARD

By Order No. L-12011/95/2003-IR (B-II) dated 15-9-2003 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by Clause (d) of sub-section 1 and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of Syndicate Bank, Gaya Branch, Bihar in not regularising the service of Shri Krishna Prasad, is correct and legally justified? If not, to what relief the workman is entitled to?”

2. Both the parties have filed a Settlement petition settling the case amicably. A memorandum of settlement has been filed duly signed by both the parties. I have gone through the terms of settlement and I find that the terms of settlement is fair and reasonable.

3. Accordingly, I pass an award in terms of settlement which shall form part of the Award.

H.M. SINGH, Presiding Officer

Ref. No. 100 of 2003

FORM—H

Memorandum of Settlement Arrived at under Section 12(3) of the Industrial Disputes Act, 1947 between the Management of Syndicate Bank and their workmen represented by Syndicate Bank Employees Union before the Presiding Officer, Central Government Industrial Tribunal No. 1, Dhanbad on 5-2-2009

Parties to the Settlement :

Representing the Management :

Sri Agasti Jal,
Senior Manager,
Syndicate Bank,
Regional Office, Patna

Representing the Union/Workmen :

Sri Prabhat Choudhary,
State Secretary, S.B.E.U.,
Bihar State Committee

Short Recital of the Case

The State Secretary, S.B.E.U., Bihar State Committee had raised an industrial dispute over alleged denial of regularization of Sri Bhup Narayan Rai, Sri Sikandar Ram and Sri Krishna Prasad working in different branches of Syndicate Bank and matter was referred for adjudication in this Tribunal. In course of hearing both the parties agreed to settle the dispute on the following terms :

TERMS OF SETTLEMENT

It is agreed between both the parties that :

- (1) The following Part Time Sweepers have been regularized from the date mentioned against their names :

Sl. No.	Case No.	Name of Candidates	Date of Regularisation	Posted to Branch
01	99/2003	Bhup Narayan Rai	02-04-2007	Danapur Nuyamat
02	101/2003	Sikandar Ram	02-12-2007	Arrah

- (2) The Management agrees to regularize the services of Sri Krishna Prasad as Part Time Sweeper at their newly opened branch Bihar Sharif where he has already joined on 15-01-2009 being the date of opening of the said branch. The Union also agrees with the same. In case No. 100/2003.

- (3) The Union has requested for inclusion of temporary service of the above Part Time Sweepers into permanent service of the Bank in tune with

the understanding reached with the management held at Manipal on 1—3rd September, 1983 as well as the provision of the Bipartite Settlement in this regard.

The Management agreed to look into the matter as per the guidelines of the Bank.

Signed By :

Representing the
Management

Sd/-

Sri Agasti Jal
Senior Manager
Syndicate Bank
Regional Office, Patna

Representing the Union/
Workmen

Sd/-

Sri Prabhat Choudhary
State Secretary
S.B.E.U.
Bihar State Committee

नई दिल्ली, 1 मई, 2009

का. आ. 1409.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 37/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-4-2009 को प्राप्त हुआ था।

[सं. एल 12012/43/2007-आई आर (बी-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 1st May, 2009

S.O. 1409.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 37/2007) of the Central Government Industrial Tribunal, Bhubaneswar now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 29-4-2009.

[No. L-12012/43/2007-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESHWAR

PRESENT :

Shri N.K.R. Mohapatra,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

Industrial Dispute Case No. 37/2007

Date of Passing Award 6-4-2009

BETWEEN

The Management of the Regional Manager,
Punjab National Bank, Station Square,
Bhubaneswar, Orissa. ... 1st Party-Management

AND

Their Workman

Shri J.V. Raju, S/o Shri J. Chinna Rao,
At. Dewan Bazar (Tanti Sahi),
P.O. Buxi Bazar,
Cuttack, Orissa. ... 2nd Party-Workman.

APPEARANCES

Shri Ajit Kumar Meher : For the 1st Party-Management,
Officer-HR.

Shri J.V. Raju. : For himself the 2nd Party-
Workman.

AWARD

The Central Government of India in the Ministry of Labour, in exercise of Powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. L-12012/43/2007-IR (B-II), dated 12-10-2007.

"Whether the action of the management of Punjab National Bank in terminating the services of Shri J.V. Raju, Casual Sub-Staff with effect from 8-6-2005 without complying the provisions of Section-25(F) of the Industrial Disputes Act, 1947 is legal, justified? If not, what relief the workman is entitled to?"

2. It is alleged by the workman in his claim statement that initially he was appointed by New Bank of India in 1991 to work as a Sub-Staff and after the merger of the said bank with the present Management-Bank he was as usual allowed to work in the canteen of the Management-Bank at Choudhury Bazar, Cuttack. After the canteen work was over he used to work in the bank as a Sub-Staff. It is alleged that when he claimed for higher wages he was terminated from service with effect from 8-6-2005 without any retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act.

3. While denying the entire allegation of the workman it is contended by the Management that as per the welfare scheme the bank employees used to have a canteen of their own by constituting a committee and the workman was accordingly engaged by that committee and as such there was no employee and employer relationship between the workman and the Bank and therefore the reference is not maintainable.

4. During trial the workman filed a petition on 29-7-2008 to withdraw the case and on its rejection he did not appear. He was therefore set ex parte and the evidence of the Management was recorded.

5. From the unchallenged evidence of the Management it appears that the canteen in which the workman was working was being managed and run by a committee formed by the employees. The Bank under Welfare Scheme used to pay Rs. 60 to each of the employees and these employees used to run a canteen of their own by investing their subsidy amount. From the above it is thus clear that there was no employer-employee relationship between the disputant and the Management-Bank and as such the reference is held not maintainable.

6. The reference is answered accordingly ex parte against the disputant.

N.K.R. MOHAPATRA, Presiding Officer

List of Witnesses Examined on Behalf of the 2nd Party-Workman

No witnesses have been examined on behalf of the 2nd Party-Workman.

List of Documents Exhibited on Behalf of the 2nd Party-Workman

No documents have been exhibited on behalf of the 2nd Party-Workman.

List of Witnesses Examined on Behalf of the 1st Party-Management

M.W.-1—Shri Ajit Kumar Meher

List of Documents Exhibited on Behalf of the 1st Party-Management

No documents have been exhibited on behalf of the 1st Party-Management.

नई दिल्ली, 1 मई, 2009

का. आ. 1410.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अर्नाकुलम, कोचीन पोर्ट ट्रस्ट के पंचाट (संदर्भ संख्या 222/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-04-2009 को प्राप्त हुआ था।

[सं. एल 35011/2/2006-आई आर (बी.-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 1st May, 2009

S.O. 1410.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 222/2006) of the Central Government Industrial Tribunal,

Ernakulam now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Cochin Port Trust and their workman, which was received by the Central Government on 29-04-2009.

[No. L-35011/2/2006-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

PRESENT:

Shri P. L. Norbert, B.A., LL.B., Presiding Officer

(Wednesday the 25th day of March, 2009/4th Chaitra, 1931)

I.D. No. 222 of 2006

Union : The General Secretary,
Cochin Port Staff Association,
Willington Island, Kochi-682 009.

By Adv. Sri N. K. Karnis.

Management : The Chairman,
Cochin Port Trust,
Willington Island, Kochi-682 003.

By Adv. M/s. Menon & Pai.

This case coming up for final hearing on 20-03-2009, this Tribunal on 25-03-2009 passed the following

AWARD

This is a reference made under Section 10(1)(d) of Industrial Disputes Act. The reference is :

“Whether the action of Cochin Port Trust in promoting Shri K. S. John and 13 other Gr. II Drivers while promoting them to Gr. IV Drivers while promoting them to Gr. IV Drivers directly without providing proforma promotion and fixation benefit arising out of the same is fair and justifiable? If not, to what relief they are entitled to and what remedy is available to the workmen to rectify the anomaly of drawing less pay than their juniors whose pay was fixed from Gr. III to Gr. IV Drivers?”

2. The facts of the case in brief are as follows : 14 workers in the office of the Chief Mechanical Engineer while working as Forklift Drivers (Grade-II) they were promoted directly to Gr. IV Driver post. According to the union while giving promotion from Gr. II to Gr. IV the pay was not fixed in Gr. III giving them proforma promotion in Gr. III. As a result they were denied benefits of fixation of pay. In spite of repeated representations the management did not allow the claim of the workers. Whereas there are instances of giving proforma promotion to Gr. III while promoting Gr. II Drivers directly as Gr. IV Drivers. The 14

workers were discriminated by the management. According to the management there is no category of Gr. II Drivers under the management. The 14 workers were Forklift Drivers. They were promoted as Gr. IV Drivers. The principle of proforma promotion is for a different purpose. Forklift Drivers having 6 years experience is qualified for promotion directly to Gr. IV if there are vacancies in Gr. IV. The workers without any objection accepted the double promotion. They are estopped from claiming fixation of pay in Gr. III. Since there were no qualified candidates in Gr. III Forklift Drivers were promoted as Gr. IV Drivers. The scale of pay of Gr. III, IV and V Drivers is the same. None of the workers have suffered any financial loss due to promotion to Grade-IV. The claim is not sustainable.

3. In the light of the above contentions the only point that arises for consideration is :

“Whether the 14 workers are entitled for proforma promotion to Grade-III?”

The evidence consists of the oral testimony of WW1 and documentary evidence of Exts. W1 to 5 on the side of the union and MW1 on the side of the management.

4. The Point : It is an admitted fact that the employees in question were working as Forklift Drivers at the time of their promotion as Gr. IV Drivers. The promotion of Forklift Drivers is to Gr. III driver as per Recruitment Rules. There is a provision in the recruitment rules to promote Forklift Drivers directly to the post of Gr. IV Drivers if there are no qualified hands of Gr. III Drivers provided Forklift Drivers have 6 years' experience and have passed trade test. The management admits that the sanctioned strength of Gr. III Driver is 9 and Grade-IV, 64. The vacancy of Gr. IV Drivers increased when the management increased the shifts from 2 to 3 in July 2001. All the 14 employees were promoted directly to Gr. IV and their salary was fixed in Gr. IV.

5. According to the union the management should have given proforma promotion to Gr. III and fixed their pay in that grade first before fixing the pay in Gr. IV. By denying proforma promotion workers are suffering financial loss and some of them are drawing less pay than their juniors. But according to the management the Recruitment Rules do not provide for proforma promotion in case of direct promotion of Forklift Driver to Grade-IV. According to them proforma promotion is given to persons on deputation. But this is not the factual position. Exts. W1 and W5 are orders promoting 4 forklift drivers and another 23 forklift drivers respectively to Gr. IV directly. They were granted proforma promotion to Gr. III and their pay was fixed in Gr. III. This is admitted by MW1, the office Manager of the Chief Mechanical Engineers office. At the time of promotion of the 14 employees to Gr. IV all the sanctioned posts in Gr. III were lying vacant. Still the workers were promoted directly to Gr. IV. Had they been promoted to Gr. III first and then to Gr. IV they would have got benefit of

fixation in Gr. III and consequent increase in Gr. IV. The contention of the management that having accepted double promotion without even a murmur they are estopped from putting forward such a claim. But it is relevant to note that it was neither on the request of workers nor after getting their willingness that they were promoted to Gr. IV. It was done by the management unilaterally. Therefore there was no occasion for the workers to raise any objection. That apart there was no chance for the employees to know how the management was going to fix their pay in Gr. IV. They realized the monetary loss only when their pay was fixed subsequent to the promotion. Ext. W2 is the seniority list of Drivers. Sl. No. 48 is Shri K. X. James (Gr. IV). He joined service on 27-08-1990 and was promoted on 01-08-2001 to Gr. IV. Sl. No. 63 Sri M. S. Suresh Babu entered service on 16-10-1990 and was promoted to Gr. IV on 01-02-2007. Ext. W3 is the salary slip of Sri K. X. James. His gross salary in the month of July 2008 was Rs. 14,632. Ext. W4 is salary slip of Sri Suresh Babu. In the month of July 2008 his gross salary was Rs. 14,935. Thus though Sri Suresh Babu is junior to Sri James the former is drawing Rs. 303 more than James. Sri K. X. James is one of the workers in this case. Sri James was promoted in 2001 while Sri Suresh Babu was promoted in 2007. Despite that Sri James is drawing less than Sri Suresh Babu. This is an anomaly and it happened due to non fixation of pay in Gr. III when the 14 employees were promoted to Gr. IV directly from Forklift Driver post (equivalent to Gr. II). The Recruitment Rules do not provide for the mode of fixation of pay. It is for the management office to work out without giving room for any complaint. When there is a vacancy in an intermediary post it is only proper either to promote an employee to that post first or else give a fixation in that grade while giving promotion to a higher post jumping the intermediary post. The employees acquired a right for promotion to the post of Gr. III Drivers when vacancy arose in that grade. They were qualified for promotion to the post of Grade III driver. So far as the 14 workers in this case are concerned they have 6 years' experience as Forklift Drivers and they have passed the trade test. Therefore they were eligible for promotion to Gr. IV as per Recruitment Rules. But that does not mean that they should be denied proforma promotion to Gr. III. The denial of such promotion has deprived them of the monetary benefits and is unfair and illegal.

In the result an award is passed finding that the action of the management in denying proforma promotion and fixation of pay in Gr. III Drivers post is unfair, illegal and unjustified and they are entitled to get their pay re-fixed setting right the anomaly in pay fixation.

The award will come into force one month after its publication in the official gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 25th day of March, 2009.

P. L. NORBERT, Presiding Officer.

Appendix**Witness for the Union :**

WW1 22-01-2009 Shri Joseph Jose.

Witness for the Management :

MW1 17-03-2007 Shri P. P. Ummer.

Exhibits for the Union :

- W1 26-04-2001 Copy of letter No. A2/1785/PP/2001-S of Cochin Port Trust.
- W2 - Copy of the Seniority list of mobile equipment section as on 31-12-2007 in the Mechanical Division, IC Engine (subject to the final disposal of W.P. No. 10251/05-U).
- W3 - Salary slip in respect of Shri K. X. James, issued by India Gateway Terminal Pvt. Ltd., Kochi.
- W4 - Pay Slip in respect of M. S. Suresh Babu, for the month of 7/2008 issued by the Cochin Port Trust.
- W5 - Copy of letter No. A2/5499/90/S dated 22-07-1999 of the management.

Exhibit for the Management :

Nil

नई दिल्ली, 1 मई, 2009

का. आ. 1411.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुरमुगाव पोर्ट ट्रस्ट के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, पणजी, गोवा के पंचाट (संदर्भ संख्या 27/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-04-2009 को प्राप्त हुआ था।

[सं. एल 12025/1/2009-आई आर (बी-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 1st May, 2009

S.O. 1411.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/95) of the Central Government Industrial Tribunal/Labour Court, Panji, Goa now as shown in the Annexure, in the Industrial Dispute between the employees in relation to the management of Mormugao Port Trust and their workman, which was received by the Central Government on 29-04-2009.

[No. L-12025/1/2009-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE**IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANJI**

(Before Anuja Prabhudessai, Presiding Officer)

Ref. No. IT/27/95

Shri Kashinath Gadekar (deceased through LR's)

1. Smt. Rukhmini Paudurang Gadekar.
2. Shri Vidyadhar Naga Gadekar.
3. Shri Sadanand Naga Gadekar.
4. Smt. Gopika Gopal Gadekar.

Rep. By :

The General Secretary,
The Mormugao Waterfront Worker's Union
P.O. Box No. 90,
Vasco da Gama, Goa ...Workman/Party I

V/s

The Chairman,
Mormugao Port Trust,
Mormugao Harbour Goa. ...Employer/Party II

Workman/Party I is represented by Adv. T. Pereira.

Employer/Party I is represented by Adv. A. C. Navelkar.

AWARD

(Passed on 27th day of February, 2009)

Shri Kashinath Gadekar, who shall be hereinafter referred to as the workman, was appointed as a seaman in the Marine Department of Party II. He was served with charge sheet dated 14-11-1992 for unauthorized absence, which constitutes misconduct under Regulation 3 of MPE (conduct) Regulations 1964. The workman had filed his reply/written statement wherein he had admitted that he had remained absent from duty. The workman had stated that his absence was due to unavoidable circumstances and had requested the management to take a lenient view. This was considered as an admission of misconduct and vide order dated 9-1-1993 the workman was removed from services w.e.f. 11-1-1993. The appeal preferred by the workman was dismissed by the appellate authority vide order dated 25-6-1993. The reviewing authority also dismissed the presentations made by the workman. The workman raised an Industrial dispute through the Party I union and the conciliation proceedings initiated by the labour commissioner ended in failure. On receipt of the failure report, the Central Government vide order dated 24-5-1995, had made the following reference :

Whether the action of the chairman, Mormugao Port Trust, Mormugao Harbour, Goa in removing

Shri Kashinath Gadekar, Seaman, EDP No. 121368. w.e.f. 11-1-1993 from Port Services is justified and proper? If not, what relief the concerned workman is entitled to?

2. On receipt of the reference IT/27/95 was registered. Notices were issued to both parties. The Party I filed his claim statement at Exb. 5 and Party II filed its written statement at Exb. 6. The rejoinder of Party I is at Exb.

3. The Party I has claimed that the earlier absence of 65 days of the workman was regularized and could not have been considered as unauthorized. The Party I has further stated that the workman was absent from 13-8-1992 to 14-10-1992 due to his ill health and some other domestic problems which were beyond his control and the said period was capable of being regularized. The Party I has stated that the Party II had dispensed with the disciplinary proceedings on the alleged admission of guilt. The Party I has stated that the mere fact that the workman had admitted that he was absent from duty does not amount to admission of charges levelled against him. The Party I has stated that the order dated 17-12-1992 is passed in violation of principles of natural justice. The Party I has stated that the charge sheet itself states that the absence of 647 days has been regularized and since the acts of omission/commission stood condoned, no disciplinary proceedings could have been initiated. The Party I has stated that the workman was on duty from 15-10-1992 till 11-1-1993 and had taken steps to regularize the said period of absence by adjusting the same within the period of leave admissible. The Party I has stated that the charge sheet does not reveal violation of regulation No. 3 of the MPE (conduct) regulations. The Party I has further stated that the workman has not committed any misconduct. The Party I has also claimed that the penalty imposed is grossly disproportionate more so when the charge sheet itself indicate that in the past the workman had only been warned. The Party I has therefore claimed that the sudden drastic action of Party II is unreasonable, unfair and unjust. The Party I had therefore sought reinstatement of the workman with all consequential benefits.

4. The Party II has stated that the workman was very irregular in his attendance such unauthorized absence was treated as extraordinary leave and several warnings and memos were issued to the workman for irregular and unauthorized absence as the same adversely affected the working of the department. Since there was no improvement in the behaviour and conduct of the workman he was served with a memo dated 3-11-1992 to explain his absence from 14-8-1992 onwards. The workman did not respond to the said memo and as such it was constrained to issue charge sheet dt. 14-11-1992. The workman was called upon to file his written statement within 10 days. It was categorically stated in the charge sheet that the enquiry will be held only if the workman denied the charge and he was specifically

called upon either to deny or admit the charges. The workman submitted his reply dated 24-11-1992 wherein he admitted the charges but requested the management to take lenient view. After considering the reply, the disciplinary authority opined that the behaviour of the workman constituted gross misconduct and indiscipline in violation of regulation 3 of MPE (Conduct) Regulation Rules, 1964 and hence decided to impose penalty of removal from service. The Party II has denied that the absence of the workman was condoned and that no disciplinary action could be initiated. The Party II has denied having violated principles of natural justice or having passed an illegal, unjust or unfair order.

5. Based on the aforesaid pleadings following issues were framed:

- (1) Whether the Party I proves that the charge sheet dated 14-11-1992 issued to him by the Party II is illegal and without any substance or basis?
- (2) Whether the Party I proves that the termination of his services by the Party II without holding any enquiry is illegal?
- (3) Whether the Party I proves that the penalty of removal of the Party I from service, imposed by the Party II is disproportionate to the alleged misconduct?
- (4) Whether the Party I proves that the action of the Party II in terminating the services of the Party I w.e.f. 11-1-1993 is not justified and proper?
- (5) Whether the Party I is entitled to any relief?
- (6) What Award?

6. The workman expired during the pendency of the reference and his legal representatives were brought on record. Both parties have adduced oral as well as documentary evidence. Learned advocate Shri T. Pereira has argued on behalf of the Party I and learned advocate Shri Naveikar has argued on behalf of the Party II. I have perused the records and considered the arguments advanced by the respective parties and my findings on the aforesaid issues are as under:

7. Issue No. 1: The workman was issued charge sheet dated 14-11-1992 (Exb. W-2) for unauthorized absence. The Party I has claimed that the charge sheet is illegal and unjust. Learned advocate T. Pereira has argued that the absence of the workman was subsequently regularized and as such the same cannot constitute misconduct. He has also argued that the workman was allowed to resume duties on 15-10-1992 and having condoned his absence the workman could not have been served with charge sheet for absenteeism. It may be mentioned here that the statement of Article of charge which forms Annexure I to the charge sheet at Exb. W-2 states that the workman was

in the habit of remaining unauthorisedly absent and regularizing the same subsequently. It was stated that workman had been warned on several occasions without any result and he had last remained absent from 13-8-1992 to 14-10-1992. It was stated that above indiscipline and irregular attendance of the workman indicates that he is not interested to continue with the service. The workman had not denied that in the past he had remained unauthorisedly absent and had regularized the leave subsequently. The question is whether unauthorized absence ceases to be a misconduct by virtue of its subsequent regularization. It may be mentioned that in the case of Delhi Transport Corporation V/s. Sardar Singh 2004(7) SCC 574 the Apex court has held that making of an application after or even before absence from work does not in any way assist the concerned employee. The requirement is obtaining leave in advance. Relying upon its earlier judgment in the case of State of M.P. V/s. Harihar Gopal 1969 (3) SLR 274, the Apex court has reiterated that even when an order is passed for treating absence as leave without pay, it is for the purpose of maintaining correct records of service and it is not same as sanctioned or approved leave. Learned advocate Shri T. Pereira has also relied upon the judgment of the apex court in the case of State of Punjab V/s. Dr. P. L. Singh (2008) 8 SCC 469 wherein the apex court has held that "Unauthorized absence (or overstaying leave), is an act of indiscipline. Whenever there is an unauthorized absence by an employee, two courses are open to the employer. The first is to condone the unauthorized absence by accepting the explanation and sanctioning leave for the period of the unauthorized absence in which event the misconduct stood condoned. The second is to treat the unauthorized absence as a misconduct, hold an enquiry and impose a punishment for the misconduct. An employee who remains unauthorisedly absent for some period (or who overstays the period of leave), on reporting back to duty, may apply for condonation of the absence by offering an explanation for such unauthorized absence and seek grant of leave for that period. If the employer is satisfied that there was sufficient case or justification for the unauthorized absence (or the overstay after expiry of leave), the employer may condone the act of indiscipline and sanction leave post facto. If leave is so sanctioned and the unauthorized absence is condoned, it will not be open to the employer to thereafter initiate disciplinary proceedings in regard to the said misconduct unless it had, while sanctioning leave, reserved the right to take disciplinary action in regard to the act of indiscipline.

8. In the instant case the records more particularly the memos and the statement of leave which form part of annexure in to the charge sheet at Exb. W-2 indicates that the workman was issued memo dated 16-2-1989. The workman had replied to this memo vide reply dated 21-2-1989 wherein he had admitted having remained unauthorisedly absent from 7-2-1989 to 19-2-1989 and had

assured not to repeat such acts in future. The leave statement indicates that absence during this period was treated as commuted/earned leave.

The Party II had served on the workman another memo dated 21-12-1989 for his unauthorized absence from 7-12-1989. There is nothing on record to show that the workman had replied to this memo, nonetheless the leave statement shows that the absence from 7-12-1989 till 11-12-1989 and from 12-12-1989 till 22-12-1989 was treated as extraordinary leave.

The workman was served with memo dated 16-5-1990 for unauthorized absence from 26-4-1990 to 30-4-1990 and reporting for duty with a leave application to regularize his absence. A perusal of this memo reveals that the workman was permitted to report for duty by treating unauthorized absence from 26-4-1990 to 30-4-1990 as a Earned Leave as a special case and with a warning not to repeat such acts.

By memo dated 11-9-90 the Party II had called upon the workman to explain his unauthorized absence from 26-8-1990. The workman had replied to this memo vide reply dated 18-9-1990 wherein he had stated that he was sick and was fit to resume duties only w.e.f. 12-9-1990. He had requested to take a lenient view. An endorsement was made on the reply that since the employee was reported sick and was admitted in hospital the reply be filed in the personal file of the Party I. The statement of leave indicates that absence from 26-8-1990 to 10-9-1990 was treated as extraordinary leave.

The Party II had served memorandum dated 24-6-1991 on the workman for his unauthorized absence from 15-5-1991. This memo was replied the workman vide reply dated 22-7-1991 wherein he had stated that he was sick and under treatment of a private doctor. The workman had also stated that he was unable to inform the office about his sickness and had assured not to report such acts vide memo dated 23-7-1991, the workman was informed that his explanation was unacceptable. The workman was also informed that the act constitutes misconduct under regulation 3 of MPT (Conduct) Regulations, 1964. The Party II had further stated that on considering all factors, a lenient view was being taken and he was being given a last chance to improve upon his conduct. As a special case the workman was permitted to resume duties by treating his absence as leave due to him. The workman was also informed that recurrence of such incident would be viewed seriously and dealt with under conduct regulations. The leave statement indicates that absence from 15-5-1991 to 20-5-1991 was treated as half pay leave and from 29-5-1991 to 30-6-1991 was treated as Extraordinary leave from 1-7-1991 to 9-7-1991 and 10-7-1991 to 21-7-1991 was treated as earned leave.

The Party II had served on the workman memo dated 25-6-1992 for his unauthorized absence w.e.f. 16-5-1992.

The workman was informed that a lenient view was being taken. The workman was given a chance to improve his conduct and was permitted to resume duties, as a special case. The workman was informed that recurrence of such act would be viewed seriously and dealt with under conduct regulation. The leave statement indicates that absence from 16-5-1992 to 23-6-1992 was treated as Extraordinary Leave.

9. The records thus indicate that though the workman was a habitual absentee and was served with several memos, the Party II had chosen not to take any disciplinary action against the workman. The absence during the period mentioned in the aforesaid memos was condoned/regularized by treating the case as special case and by issuing warning and instructing the workman to be punctual in future. Since the unauthorized absence specified in the aforesaid memos was already condoned no disciplinary action could be initiated in respect of the said period ending on 23-6-1992 and the said memo, explanation, warnings etc. could at the most be relied upon to prove the past conduct of the workman.

10. It may be mentioned here that the charge sheet at Exb. W-2 was not only in respect of the said period of absence but also included absence from 13-8-1992 to 14-10-1992. The records indicate that by memo dated 25-8-1992 the workman was called upon to explain his unauthorized absence from 13-8-1992. The workman was informed that the said act amounts to misconduct under Regulation 3 of MPT (conduct) Regulation 1964 and the workman was called upon to show cause why disciplinary action should not be taken against him. The workman had neither replied to the said memo nor reported for duty and as such by memos dated 20-9-1992 and 28-9-1992 the workman was once again called upon to submit his explanation. The memo dated 3-11-1992 indicates that workman had reported for duty with medical certificate issued by a private practitioner and the workman was permitted to report for duties pending disciplinary action. The workman was once again called upon to show cause why disciplinary action should not be taken against him. The records indicate that workman had not submitted any explanation and charge sheet at Exb. W-2 was issued to him. The workman had admittedly not reported for duties from 13-8-1992 to 23-10-1992. The absence during the aforesaid period was unauthorized and the workman was called upon to show cause as to why disciplinary action should not be taken against him. The workman had neither filed any reply to the said memos nor had Party II regularized or condoned absence during the said period but had merely permitted the workman to report for duties during the pendency of disciplinary action. This certainly cannot be treated as condonation of absence or sanctioning of leave. Similarly treating absence during this period as Extraordinary Leave does not amount to sanctioning the leave or condoning the delay. As held by the apex court, this can be done to maintain correct records. In fact Shri

Francis Rodrigues, the witness of Party I has also admitted that unauthorized absence has to be regularized for the purpose of disbursement of the salary etc. This being the case absence from 13-8-1992 to 23-10-1992 was unauthorized and charge sheet cannot be said to be illegal merely because reference was made to the previous absence which was condoned. Hence issue No. 1 is answered in the negative.

11. **Issue No. 2 :** Learned advocate Shri T. Pereira has argued that the charge against Party I is that he was indisciplined and not interested to continue with service. He has argued that the workman had denied that said charge in para 3 and 4 of his reply (Exb. W-3) and as such the Party II could not have dispensed with the enquiry on the ground that the workman had admitted the entire article of charge. He therefore claims that the order of termination, which is passed without holding an enquiry, is illegal. He has relied upon the judgments of the apex court in the case of Telecom District Manager V/s. Keshab Deb (2008) 8 SCC 402 and Jagdish Prasad Saxena V/s. State of Madras Bharat AIR 1961 SC 1070.

12. In this regard Learned advocate Shri Navlekar has argued that the charge levelled against the workman was specifically stated in the Article of Charge, annexure 1 of the charge sheet and the workman was called upon either to admit or deny the charge and was further informed that the enquiry would be conducted only if he denied the charges. He has argued that the workman had admitted the charges and as such it was not necessary to conduct an enquiry.

13. In the case of Telecom Manager, the workman had not pleaded guilty to the charge but was not allowed to join duty because he had misbehaved with a senior officer, damaged and misused the Government vehicle and he was convicted to undergo simple imprisonment for 8 days and pay fine of Rs. 30 for offence u/s. 34(6) of the Police Act. The apex court held that termination being stigmatic in nature a regular department proceedings should have been initiated against him before terminating his services and termination was held to be illegal.

14. In the case of Jagdish Prasad Saxena (supra) no formal enquiry was held and an order of dismissal was passed on the basis of admissions made in another enquiry directed against some other person. The apex court has held that termination order could not be based on such admission. It was also held that if the statements do not amount to clear or unambiguous admission of guilt, failure to hold a formal enquiry would constitute a serious infirmity in the order of dismissal.

15. Reverting to the present case, the workman was charged for remaining unauthorizedly absent from duty which amounts to indiscipline and shows lack of interest in work. It is to be noted that in terms of Regulation 3 of MPT (Conduct) Regulations 1964, every employee is

required to maintain absolutely integrity and devotion to duty at all times. In the case of Delhi Transport Corporation V/s. Sardar Singh 2004 (7) SCC 574 (supra) the apex court has held that when an employee absents himself from duty, even without sanctioned leave for very long period, it prima facie shows lack of interest in work. It was held that when an employee absents himself from duty without sanctioned leave the Authority can, on the basis of the record come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employers work. In the instant case, the Party II had sufficient material to charge the workman for showing lack of interest or absolute devotion to duty and had accordingly issued memos wherein the workman was specifically called upon to explain his unauthorized absence. The workman was also informed that unauthorized absence amounts to violation of Regulation 3 of MPT Conduct Regulations 1964 and he was called upon to show cause why disciplinary action should not be taken against him under the conduct rules. The workman had not replied to these memos and charge sheet at Exb. W-2 was issued to him, wherein the charges were spelt out and the workman was called upon either to admit or deny the charges and was further informed that the enquiry would be held only if he denied the article of charge. The records indicate that the workman had filed his reply (Exb. W-3) to the charge sheet wherein he had stated in para 2 that he fully agrees to the articles of charge for remaining unauthorisedly absent and subsequently regularizing the same. The workman had also agreed that he was warned in the past for being a habitual absentee. The workman had further stated that he had not done anything with bad intention and that he had some domestic problems. The workman had therefore requested to take a lenient view. A plain perusal of this reply clearly indicates that the workman was aware that he was charged for unauthorized absence which amounted to violation of Regulation 3 of the Rules and having known these charges the workman had specifically and categorically admitted that he was a habitual absentee. As stated earlier habitual unauthorized absenteeism amounts to lack of devotion to duty and since the workman had admitted the charge of habitual absenteeism which amounted to lack of devotion of duty, the Party II was not required to conduct any enquiry into the charge levelled merely because the workman had given explanation for his absence which was evidently given for taking a lenient view. This being the case the judgments relied upon by learned advocate T. Pereira are not applicable to the facts of present case. In the instant case the workman had admitted the charges in clear and unequivocal terms and hence termination cannot be said to be illegal for want of disciplinary enquiry. Hence issue No. 2 is answered in the negative.

16. Issue Nos. 3 and 4 : The Party I has claimed that the penalty of removal was not justified and the same is grossly disproportionate to the gravity of misconduct. In

this context learned advocate Shri T. Pereira has relied upon judgment of the Hon'ble Bombay High Court in the case of Richardson and Cruddas Ltd. V/s. Association of Engineering Workers 1996 (3) ALL MR 281 and the case of International Airport Authority of India V/s. Viru Muthu Saklingam 1993 (ii) LLJ 388. Learned advocate Shri Navelkar has argued that the past records of the workman show that he was warned and was given ample opportunity to improve his conduct, despite which the workman continued to remain absent unauthorisedly. He has argued that such conduct adversely affects working of the department and that the penalty imposed is just and legal. He has relied upon the judgment in the case of M/s. LT. & T Komatsu Ltd. V/s. N. Uday Kumar 2008 (8) ALL MR 491 and the case of State of Punjab and Ors. V/s. Bakshish Singh AIR 1997 SC 2696.

17. In the case of International Airport Authority the order of termination was held to be void as services of the workman were terminated without holding a domestic enquiry. It was further held that even assuming that no domestic enquiry was necessary, an opportunity was required to be given to place before the competent authority all the facts and circumstances of the case to enable question of condonation of unauthorized absence being considered in accordance with law. Since no such opportunity was afforded, it was held that the termination was not in conformity with provisions of the regulations. The said order of Tribunal was upheld by the single judge and by the Division Bench.

18. The facts of the aforesaid case are not at all applicable to the facts of the present case, as in the instant case the workman was issued the charge sheet and the workman had admitted the charges and this obviated the need to held an enquiry. Consequently termination of the workman cannot be held to be illegal for want of enquiry.

19. In the case of Richardson and Cruddas, the workman was charge sheeted for habitual absenteeism. The workman had pleaded guilty and he was dismissed from the service. The labour court held that the charge levelled against the workman is of minor nature and that the explanation offered by him showed that he had not deliberately committed breach of rules of the company. It was held that whenever he remained absent he furnished medical certificates and this removed the gravity of the Act. The labour court held that the workman was a football player of the company and that since the company wants to dismiss the workman since it has stopped sending football players at national level. After so holding the Labour Court held that the punishment imposed was shockingly disproportionate. Considering this fact and also considering the past service record of the said workman the labour court set aside the dismissal and ordered reinstatement with 50% backwages. The order of the labour court was upheld by the single judge of the Hon'ble High

Court on the ground that the punishment of dismissal was very harsh and shockingly disproportionate and that the workman who was a coolie lost about Rs. 1,50,000 by way of back wages is itself a sufficient punishment. The Division Bench of the High Court held that the labour court had been judicious in its approach in the matter of quantum of punishment and thereby declined to interfere with the order.

20. The facts of the case of Richardson are also distinguishable as in the instant case the past records of the workman are far from being satisfactory. The past records indicate that the workman was in the habit of remaining unauthorisedly absent and regularizing his absence subsequently. The workman had been warned for such conduct despite which the workman continued with his habit and remained unauthorisedly absent from 13-8-1992 to 14-10-1992. The workman had neither explained this absence nor sought to regularize the said absence hence it cannot be said that the workman had sufficient and genuine reasons for remaining absent. The records indicate that the workman was a chronic absentee and such absenteeism affects working of the establishment. Such conduct was deprecated by the Apex Court in the case of Life Insurance Corporation of India V/s. R. Dhandapani AIR 2006 SC 615.

21. In the case of M/s. L & T Kamatsu, the Apex Court has held that habitual absenteeism amounts to gross violation of discipline. In this case the apex court after considering its previous judgments has reiterated that powers under Section 11A are to be exercised within the parameters of law. It has been held that the power vested on the Tribunal u/s. 11A of the Act, in interfering with the quantum of punishment has to be exercised judiciously. The discretion which can be exercised u/s. 11A is available only on the existence of certain factors like punishment being shockingly disproportionate to the grant of misconduct so as to disturb the conscience of the court or the existence of any mitigating circumstances which require the reduction of the sentences or the past conduct which may persuade the court to reduce the punishment. Reliance is also placed on Tata Engineering and Locomotive Company V/s. Suhas Mulay 2007 (6) Bombay C. R. 527, Tata Locomotive Comp. V/s. Ishwarchang Jain 2007 (6) Bom. C. R. 427 and the case of Dnyaneshwar P. Gharat V/s. General Manager BEST undertaking reported in 2005 (4) Bom. C. R. 722.

22. In the instant case, as stated earlier, the past conduct of the workman is far from being satisfactory and there are no mitigating circumstances to interfere with the punishment awarded to the workman. Hence issue No. 3 and 4 are answered in the negative.

Under the circumstances and in view of discussion supra I pass the following order :

ORDER

The action of the Chairman, Mormugao Port Trust, Mormugao Harbour, Goa in removing Shri Kashinath Gadekar, Seaman, EDP No. 121368, w.e.f. 11-1-1993 from Port Services is held to be just and proper. It is further held that the Party I/LRs of Party I are not entitled to any reliefs.

No order as to cost. Inform the Government accordingly.

Dated : 27-2-2009

Panaji

A. PRABHUDESSAI, Presiding Officer

नई दिल्ली, 1 मई, 2009

का. आ. 1412.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, एर्नाकुलम के पंचाट (संदर्भ संख्या 330/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 29-4-2009 को प्राप्त हुआ था।

[सं. एल-12011/202/2002-आई आर (बी-1)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 1st May, 2009

S.O. 1412.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 330/2006) of the Central Government Industrial Tribunal. Ernakulam now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 29-4-2009.

[No. L-12011/202/2002-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present : Shri P. L. Norbert, B.A., LL.B., Presiding Officer
(Tuesday the 31st day of March, 2009/10th Chaitra 1931)

I.D. No. 330/2006

(I.D. 24/2002 of Labour Court, Ernakulam)

Union	: The General Secretary, Canara Bank Staff Union, 41/2201, Ernakulam, Cochin-18. By Adv. Sri. Ashok B. Shenoy
Management	: The Deputy General Manager, Canara Bank, Staff Section (W) Circle Office, Trivandrum-695 039. By Adv. M. P. Sreekrishnan.

This case coming up for hearing on 30-03-2009, this Tribunal-cum-Labour Court on 31-03-2009 passed the following :

AWARD

This is a reference made under Section 10(1)(d) of Industrial Disputes Act. The reference is :

“Whether the enquiry conducted into the charges levelled against Shri M. K. Prakashan was correct or not ? Whether the punishment of discharge imposed by the management of Canara Bank on Shri M. K. Prakashan is legal and justified ? If not, what relief the concerned workman is entitled to ?”

2. Facts of the case in brief are as follows :

Sri. M. K. Prakashan was a Peon of Canara Bank at Thripunithura branch in the service in 1984. In 1999 he was charge sheeted for fraudulent transactions and misappropriation of money. A domestic enquiry was conducted and he was found guilty of the charges. The disciplinary authority discharged him from service. The disciplinary action is under challenge.

3. According to the union the enquiry was conducted in violation of principles of natural justice. The Enquiry Officer was the officer, who had ordered investigation against the workman and hence he was biased. The concerned account holders whose money is alleged to have been taken away by the workman were not examined thereby denying an opportunity to cross examine them. The statements of witnesses recorded by the Investigating Officer were marked without examining the authors of statements. The findings are entered on the basis of surmises and conjectures. The punishment is illegal. The workman was in service for 14 years with clean service record. The workman is the only bread winner of the family consisting of his wife, two school going children and no other source of income. The workman is entitled to be reinstated.

4. According to the management as many as 6 charges of fraudulent withdrawals and misappropriation of funds of customers were levelled against the workman. In the enquiry all the charges were found against the workman. The Disciplinary Authority provided an opportunity to the workman to submit his remarks regarding the findings. However there were no convincing reasons to interfere with the findings. Hence a notice of proposed punishment was given to the workman. After considering his submission the punishment of discharge with superannuation benefits without disqualification from future employment was imposed on the workman. Though he filed an appeal, he did not succeed. The punishment is in proportion to the gravity of the misconduct. The workman was given sufficient opportunity to cross examine management witnesses and adduce defence evidence. He was defended by the Assistant Secretary of the union.

There is no violation of the principles of natural justice. The Enquiry Officer was working as Divisional Manager in the Regional Office, Ernakulam. He had ordered investigation into the allegations against the workman. However he was not connected with the investigation. The decision in respect of the investigation report was taken by the disciplinary authority. Therefore the fact that, the Enquiry Officer was the officer, who had ordered investigation into the complaint against the workman, has caused no prejudice to the workman. The Investigating Officer was thoroughly cross examined by the defence. No witnesses other than the staff of the bank whose statements were recorded turned up for giving evidence though notices were sent to them. There are no mitigating circumstances to reduce the punishment.

5. In the light of the above contentions the following points arise for consideration :

1. Are the finding sustainable ?

2. Is the punishment proportionate ?

The evidence consists of the oral testimony of MW1 and documentary evidence of Ext. M1 (Enquiry File alone).

6. Point No. 1 : Sri M. K. Prakashan was a Peon of Thripunithura Branch of Canara Bank when allegations were raised. As per charge sheet Ext. ME-1, six charges were levelled against him. The charges are that he had fraudulently withdrawn Rs. 15,500 from the account of Sri. Balakrishnan P.C., misappropriated an amount of Rs. 2,500 from the SB account of Sri. M. A. Kuttappan, fraudulently withdrawn an amount of Rs. 6,000 from the SB account of Sri M. V. Choti, fraudulently withdrawn an amount of Rs. 6,000 and Rs. 5,000 from the SB account of Sri. E. K. Sathyan, fraudulently withdrawn an amount of Rs. 4,500 from the SB account of Sri. C. T. Kunjumon and after getting a blank SB withdrawal form signed by account holder Sri. M. K. Sukumaran the workman had withdrawn Rs. 5,000 from the account of Sukumaran after getting a TOD for Rs. 2384 sanctioned by Senior Manager of the Branch at the instance of the worker as there was no sufficient fund in the account to withdraw Rs. 5,000. Seven witnesses were examined and 97 documents were marked on the side of the management in the enquiry. No defence evidence was adduced. The Enquiry Officer on the basis of the evidence found that all the charges stood proved.

7. According to the learned counsel for the union the alleged fraudulent transactions are not proved through any of the witnesses. The particulars of none of the alleged transactions were drawn to the attention of the witnesses and proved through them. All the documents were merely marked without referring to particular transactions. There is no evidence to show that the withdrawals were made by the workman. All the withdrawals were processed and sanctioned by concerned officers of the bank. The workman being a Peon of the bank could not have processed the transactions of withdrawal.

8. The concerned Clerks who had passed the withdrawals and made payments are MWs. 2, 4, 5 and 6. In the cross examination to a specific question by the defence whether the workman had really received payments of the alleged withdrawals, they were not able to say for certain that the workman had received the payments. However they say that the workman was in the habit of filling up withdrawal forms, submitting them to the concerned clerks and receiving payments on behalf of customers in general. However they are not able to say whether the disputed withdrawals were made and payments received by the workman. But in their statements given to the Investigating Officer they did say that the withdrawal forms were submitted by the workman and payments were received by him. Ext. ME-36 (Sl. No. 34 of the document of the management) is statement of MW2, Smt. P. Premalatha, Clerk of Thripunithura branch. Ext. ME-37 (Sl. No. 35) is the statement given by MW4 Sri. R. Ramaswamy, Clerk of Thripunithura branch to the investigating officer. He speaks about the handwriting and the token number in the withdrawal slips in respect of the account of P. C. Balakrishnan. Ext. ME-38 (Sl. No. 36) is statement given to the Investigating Officer by Smt. Syamala Neelakandan, Clerk of Thripunithura Branch. Ext. ME-35 (Sl. No. 33) is the statement of Sri. P. K. Muraleedharan, Clerk of Kolancherry Branch formerly working in Thripunithura branch during 1996-1999. He states that he had made payment of Rs. 7,500 to the workman as per withdrawal form in respect of SB No. 35075 of Sri. P. C. Balakrishnan. However these witnesses when they were examined in the enquiry were not able to say for certain whether the respective payments were given to the workman. But the whole argument of the learned counsel for the union falls to the ground in view of the admission of the workman contained in his reply Ext. ME-2 {Sl. No. 1 (a)} to the memo of charges. He admits that he had received payments on various dates as mentioned in the charge sheet. But according to him the amounts were paid by him to the concerned account holders. Since he admits that he had received payments on behalf of different customers the burden is on him to prove that as soon as he received the amounts from the concerned Clerks he had handed over the amounts then and there to the concerned customers. No such evidence is adduced by the workman. On the other hand some of the account holders have given statements to the Investigating Officer against the workman alleging withdrawal of money from their accounts without their knowledge. Besides the workman remitted amounts in respective accounts to make good the loss after detection of the fraud and investigation by a senior officer of the bank. Ext. ME-2 reply to memo of charges was given on 31-12-1999. Had he acted on behalf of the account holders with a view to help them in getting the money quickly he could have examined some of the account holders to prove that money that was withdrawn was actually received by them then and there. But no defence evidence at all was

adduced in the enquiry. MW7 is the Investigating Officer. He had recorded statements of officers and staff of the branch and account holders from whose accounts amounts were withdrawn by the workman. Among them the officer and staff of the bank alone were examined in the enquiry. According to the management the account holders were given notices to appear in the enquiry and give evidence. But they did not turn up probably because amounts withdrawn were remitted by the workman in their respective accounts and thus they did not suffer any loss. It is not in the interest of the bank to drag customers into domestic enquiry proceedings unnecessarily and against their will. It is true that the statements of witnesses were proved through the Investigating Officer MW7 alone. They are Exts. ME-49 (Sl. No. 47), ME-56 (Sl. No. 54) and ME-84 (Sl. No. 82). The statements of officers and staff were initially proved through Investigating Officer and later they were confirmed through concerned witnesses MWs 1 to 6. Besides documents Exts. ME-1 to 97 were marked through MWs. 1 to 7 and the documents are account opening forms, credit and debit slips, ledger, registers, withdrawal orders, withdrawal forms, statements of witnesses and confession statements of the workman. It is relevant to note that the workman had given confession statements Exts. ME-93 and 94 (Sl. Nos. 91 & 92) to the Investigating Officer on 28-5-1998 and 27-5-1998 respectively unequivocally admitting the charges. It is a voluntary statement. This was never questioned at any time before any authority or Senior Officers of the bank. He had not made even a whisper about the confession statements in his reply to the memo of charges (Ext. ME-2) given 1½ years after the confession statements. When the Investigating Officer was cross examined there was no question touching the confession statements. It follows therefore that he had voluntarily given Exts. ME-93 and 94 statements to the Investigating Officer which clinch the issue that he is guilty. All the relevant documents were produced by the management in the enquiry. The documents coupled with the confession statements as well as the admission of receipt of payments mentioned in Ext. ME-2, clearly prove the charges levelled against the workman. There is no infirmity in the findings.

9. **Point No. 2 :** The punishment imposed is discharge with superannuation benefits and without disqualification from future employment. The mitigating circumstances mentioned by the workman and contained in para 16 of the claim statement is that he had been working for 14 years in the bank with clean service record. He is the sole bread winner of his family consisting of wife and two school children. There is no other source of income. He is from a poor family. He is aged 45 years and there is no prospects for future employment else where. The punishment is harsh and disproportionate. The family background of the workman did not weigh with the disciplinary authority or the appellate authority in the matter of punishment. The workman has committed several fraudulent acts and misappropriated money of customers.

This was done misusing his position as a bank staff and exploiting the trust put in him by the officers and staff of the bank. Considering the nature of the misconduct and its gravity and the number of instances of fraud I don't think any reduction in punishment is warranted in this case. The management has already shown some leniency to the extent of ordering discharge from service with superannuation benefits instead of dismissal from service which would have denied him even retiral benefits. There is no impropriety or illegality in the order of punishment or disproportionality in the quantum of punishment.

10. In the result an award is passed finding that a proper enquiry was conducted and the punishment imposed is legal and justified and the workman is not entitled for any relief.

The award will come into force one month after its publication in the official gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 31st day of March, 2009.

P. L. NORBERT, Presiding Officer

नई दिल्ली, 1 मई, 2009

का.आ. 1413.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इण्डिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच; अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, पणजी, गोवा के पंचाट (संदर्भ संख्या 62/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-4-2009 को प्राप्त हुआ था।

[सं. एल-12025/1/2009-आई आर (बी-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 1st May, 2009

S.O. 1413.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 62/2002) of the Industrial Labour Court, Panaji, Goa now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 29-4-2009.

[No. L-12025/1/2009-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI

(Before Smt. Anuja Prabhudessai, Hon'ble Presiding Officer)

Case No. IT/62/02

Shri A. B. Furtado

H. No. 104, Saicovaddo,

Deussua, Chinchinim,

Salcete, Goa

... Workman/Party I

V/s

Bank of India,
Vasco da Gama
Branch, Goa

... Employer/Party II

Workman/Party I Absent

Employer/Party II is represented by Adv. P. J. Kamat

AWARD

(Passed on this 31st day of March, 2009)

The Party I was working at Party II bank as a reserve clerk. He was issued a charge sheet dated 5-6-2000 stating that while working as a dispatch clerk from March 1999 to October 1999 the total 29 Special Collection Schedules (SCS) sent to dispatch Department were not dispatched properly and due to gross negligence of the workman a SCS fraud of huge magnitude to the extent of 3.83 crores was perpetuated. The Party I was charged for committing misconduct under clause 19.5(j) of the first Bipartite Settlement. The Departmental enquiry was conducted and the charges were held to be proved. Notice was given to the Party I on the proposed punishment. By order dated 17-8-2001 the Party I was dismissed from services. The Party I raised a dispute and upon receipt of the failure report the Central Government referred the following dispute for adjudications.

"Whether the action of the management of Bank of India in dismissing Shri A. B. Furtado, Staff-Clerk at Vascodegama Branch, Goa from service w.e.f. 17-8-2001 is legal and justified? If not, what relief the workman is entitled for?"

2. Notices were issued to both parties. Party I had filed his Claim statement at Exb. 5 & the Party had filed his written statement at Exb. 6. The rejoinder of the Party I is at Exb. 7.

3. The Party I has stated that, the evidence of MW1 indicates that out of 29 SCS, 2 SCS are lying the bank, 9 SCS were dispatched by the workman between 21-5-1999 — 12-10-1999 and 2 SCS were dispatched by a peon and 14 SCS were not found. He therefore claims that the charge that he had not dispatched 29 SCS is false. The Party I has further stated that 9 SCS dispatched by him by registered post were duly delivered and hence there was no negligence on his part. The Party I has stated that he is not responsible for misplacing of 14 SCS and that he had not received the same. The Party I has stated that he had not received 2 SCS which were dispatched by the peon. He has stated that the said peon was directly under the control of the officer of the Dispatch Department. The Party I has stated that he has not committed any act of gross misconduct or gross negligence to invoke clause 19.5 (j) of first Bipartite Settlement. The Party I claims that the punishment imposed is illegal and unjustified. The Party I has stated that there was negligence on part of the officer and fraudulent acts of the peon. The Party has stated that no major penalty was

imposed on these officers. He claims that the order of dismissal is illegal. The Party I had therefore sought reinstatement with full back wages and continuity in services.

4. The Party II has denied that the charges levelled against the Party I are false. The Party II has stated that as a dispatch clerk the Party I was required to enter the document in the dispatch register, put the document in an envelope and send the same to the officer for check. On receipt of the document, the party I was required to insert the document in the envelope and close the same in presence of the officer and after sealing and franking for postage, deliver the same to the peon for mailing. The Party II has stated that the negligence on the part of the Party I has resulted in a fraud of huge magnitude. The Party II has denied that the charges levelled against the Party I were false. The party II has stated that on 11-3-1999, a Current Account No. 621 was opened in the name of M/s Ajmeree Construction by one Shri Mohamad Ali and deposited cheques drawn on various banks issued in favour of the said Shri Ajmeree Construction. The Party II has stated that the said cheques were sent for collection through Special Collection Schedules. The Party II has stated that at the relevant time the Party I was working as a dispatch clerk of the Bank. The Party II has stated that around 29 SCS in respect of the cheques received for collection were sent to the dispatch section for dispatching the same. The Party II has stated that the said SCS were of heavy amounts and the Party I was expected to be very cautious in dispatching the said SCS. The Party II has stated that the Party I failed and neglected to ensure that the above said SCS were dispatched properly. The Party II has stated that due to the gross negligence and failure on the part of the Party I to ensure the safety and dispatch of the above said documents a fraud of huge magnitude to the extent of Rs. 3.83 crores was perpetuated at the Branch in the C/CA/c. of M/s Ajmeree Constructions.

5. Based on the aforesaid pleading the following issues were framed :

1. Whether the Party I proves that the domestic enquiry held against him is not fair and proper ?
2. Whether the charges of misconduct levelled against the Party I are proved to the satisfaction of the Tribunal by acceptable evidence ?
3. Whether the Party I proves that the action of the Party II in dismissing him from service w.e.f. 17-8-2001 is illegal, unjustified and discriminatory ?
4. Whether the Party I is entitled to any relief ?
5. What Award ?

6. Issues No. 1 & 2 were treated as preliminary issues. Both parties had adduced evidence on these issues. Findings on these two issues were given vide order dated 26-2-09 wherein the enquiry was held to be fair and proper and the charges of misconduct levelled against the Party I were held to the satisfaction of the Tribunal by acceptable evidence. The matter was posted for evidence on issue no. 3. Despite several opportunities given no evidence has been adduced in respect of issue no. 3. Consequently, there is absolutely no evidence to prove that the order dated 17-8-2001 whereby the Party I was dismissed from service is illegal, unjustified or grossly disproportionate to the charges proved. Hence issue no. 3 is answered in the negative. Hence the Party I is not entitled for any relief under the circumstances and in view of discussion supra, I pass the following :

ORDER

The action of the management of Bank of India in dismissing Shri A. B. Furtado, Staff-Clerk at Vasco-da-Gama Branch, Goa from service w.e.f. 17-8-2001 is held to be legal and justified. The Party I is not entitled for any relief.

Inform the Government accordingly.

Dated : 31-3-2009
Panaji, Goa

ANUJA PRABHUDESSAI, Presiding Officer

नई दिल्ली, 1 मई, 2009

का.आ. 1414. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, श्रम न्यायालय, पणजी, गोवा के पंचाट (संदर्भ संख्या 78/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-4-2009 को प्राप्त हुआ था।

[सं. एल-12025/1/2009-आई आर (बी-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 1st May, 2009

S.O. 1414.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 78/97) of the Industrial Tribunal/Labour Court, Panaji, Goa now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 29-4-2009.

[No. L-12025/1/2009-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE**IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-I AT PANAJI**(Before Smt. Anuja Prabhudessaj, Hon'ble Presiding
Officer)**Ref. No. IT/78/97**Mario C. D'Souza
Rosemvilla,
Porbavaddo Calangute,
Bardez, Goa

... Workman/Party I

VsThe Regional Manager
Bank of Baroda,
Regional office,
Panaji, Goa,

... Employer/Party II

Workman/Party I is represented by Adv. L. V. Palekar

Employer/Party I is represented by Adv. P. J. Kamat

AWARD

(Passed on this 10th day of March, 2009)

The Party I was working as a Cashier for the Party II Bank. He was served with show cause notice dated 5-3-90 and 6-9-90 and was subsequently issued chargesheet dated 15-1-91 for alleged misconduct under five different heads of charges. The enquiry was conducted by Shri R. S. Kamat and he submitted his findings dated 10-2-92, holding the Party I guilty of all the five charges. The Show Cause Notice was issued to the Party I and subsequently on going through the findings of the enquiry officer as well as the explanation given by the Party I, the disciplinary authority decided to dismiss the services of the Party I. The Party I was heard on the proposed punishment and thereafter by order dated 18-8-93 the services of the Party I were terminated. The Party I raised a dispute. Conciliation proceedings ended in failure and on receipt of the failure report the Government of Goa vide order dated 28-11-97 has referred the following dispute for adjudication of this Tribunal.

"Whether the action of the management of Bank of Baroda, Panaji, Goa in dismissing the services of Shri Mario C. D'Souza, Ex- Head Cashier of Morjim Branch of Bank of Baroda and r/o Rosemvilla, Porbavaddo, Calangute, Goa w.e.f. 27-8-93 on the basis of the enquiry conducted without giving him opportunity to reform is justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the said reference, IT/78/97 was registered. Notices were issued to both parties. The Party I filled his claim statement at Exb. 4. The written statement of Party II is at Exb. 5. The rejoinder is at Exb. 6.

3. The Party I has challenged the fairness of the enquiry on the ground that he was not allowed to be represented by an advocate or by a representative of a union. The Party I has further stated that the Inquiry Officer was biased in favour of the management. He has stated that the Inquiry Officer had not allowed him to cross-examine the witness properly and that the enquiry was conducted in undue haste. The Party I has further stated that at the fag end of the enquiry the Inquiry Officer obtained his signature on some writing stating that the same was in token of attendance but he subsequently realized that what was recorded by the Inquiry Officer, was an admission of guilt and that his signature was obtained by him under misrepresentation. The Party I had stated that he had not admitted the guilt and infact he wanted to examine witnesses and that he was not allowed by the Inquiry Officer to examine the witnesses who were present. The Party I has further stated that the report submitted by the Inquiry Officer does not pertain to the charges levelled against him. The Party I has further stated that the Party II had not considered his representation and that his dismissal is by way of victimization. The Party I has therefore sought reinstatement with back wages and continuity in service.

4. The Party II has denied that the enquiry was biased and that the Inquiry Officer had not followed the principles of natural justice. The Party II has stated that an opportunity was given to the Party I to be represented by a representative of the union of which he was a member and that the Party I had not sought any assistance of a representative and had preferred to cross-examine the witnesses in person. The Party II has further stated that sufficient opportunity was given to the Party I to cross-examine the witnesses.

5. The Party II had denied that the signature of Party I was obtained on the proceeding sheet by misrepresentation. The Party II has denied that the Party I had stated that he wanted to examine his witnesses. The Party II has stated that on 7-2-92 after the management had closed the evidence, the Inquiry Officer had asked the Party I whether he wanted to say anything after which the Party I had voluntarily admitted the charges. The Party II has stated that the Inquiry Officer had submitted his findings holding the Party I guilty of the charges levelled. The Show Cause Notice was issued to the Party I on the proposed punishment and after considering the gravity of the charges, the services of the Party I were dismissed. The Party II has denied that the dismissal order is illegal or by way of victimization. The Party II has stated that the charges levelled against the Party I are sufficiently proved and as such the party I is not entitled for any reliefs.

6. Based on the aforesaid pleadings following issues were framed :

- (1) Whether the workman/Party I proves that the domestic enquiry held against him is not fair and proper?

- (2) Whether the charges of misconduct levelled against the workman/Party I are proved to the satisfaction of the Tribunal by acceptable evidence ?
- (3) Whether the workman/Party I proves that the action of the employer/Party II in terminating his services w.e.f. 27-8-93 is illegal and unjustified and by way of victimization ?
- (4) Whether the workman/Party I is entitled to any relief ?
- (5) What Award ?

7. Issues no. 1 and 2 were treated as preliminary issues. Findings were given to these two issues, vide order dated 27-1-2009 wherein it has been held that the domestic enquiry held against the Party I is fair and proper and that the charges levelled against the Party I are proved to the satisfaction of the Tribunal by acceptable evidence. Subsequent to the order dated 27-1-2009 matter was fixed for evidence of the Party I on issue no. 3. No evidence has been led on behalf of the Party I to prove that the action of the Party II in terminating the services of Party I is illegal unjustified and by way of victimization.

8. It may be mentioned here that the charges proved against the Party I are serious in nature. The records of the enquiry proceedings indicate that even in the past there were complains against the Party I and he had tendered apology and had assured not to repeat such incidents. The records indicate that despite the assurance, the Party I had continued with his arrogant, indecent and disrespectful behaviour with the customers and also towards his colleagues. Such behaviour is prejudicial to the interest of the bank and as such the action taken by the Party II cannot be said to be harsh, illegal, unjustified or by way of victimization. Consequently the Party I is not entitled for any relief. Hence issue no. 3 are answered in the negative.

Under the circumstances and in view of discussion supra I pass the following :

ORDER

It is held that the action of the management of Bank of Baroda, Panaji, Goa in dismissing the services of Sh. Mario C. D'Souza, Ex-Head Cashier of Morjim Branch of Bank of Baroda and r/o Rosemvilla, Porbavaddo, Calangute, Goa w.e.f. 27-8-93 is held to be justified. The Party I/L Rs are not entitled for any relief.

No order as to cost. Inform the Government accordingly.

Dated : 10-3-2009

Panaji.

A. PRABHUDESSAI, Presiding Officer

नई दिल्ली, 1 मई, 2009

का. आ. 1415.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इण्डियन बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 66/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-4-2009 को प्राप्त हुआ था।

[सं. एल-12011/88/2007-आई आर (बी-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 1st May, 2009

S.O. 1415.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 66/2007) of the Central Government Industrial Tribunal, Chennai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Indian Bank and their workman, which was received by the Central Government on 29-4-2009.

[No. L-12011/88/2007-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 3rd March, 2009

Present : A.N. Janaradanan, Presiding Officer

Industrial Dispute No. 66/2007

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Bank and their workmen].

Between

Indian Bank Employees Union : Petitioner/I Party

vs

Indian Bank : Respondent/II Party
Represented by General
Manager, Circle Office,
Ethiraj Salai,
Chennai-600008

APPEARANCE:

For the Petitioner : Sri K. J. Arunachalam

For the Management : M/s. T.S. Gopalan &
Co.

AWARD

The Central Government, Ministry of Labour vide its Order No. L-12011/88/2007-IR(B-II) dated 24-10-2007 referred the following Industrial Dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is :

"Whether the action of the Management of Indian Bank in imposing the punishment of 'be brought to lower stage in the scale of pay by one stage for a period of three years without cumulative effect' on Sri B. Deivachilai is legal and justified? If not, to what relief is the workman entitled?"

2. After the receipt of the Industrial Dispute, the referred ID was taken on file as ID 66/2007. Pursuant to notice both the parties entered appearance through their respective counsel and filed their Claim and Counter Statement and rejoinder as the case may be.

3. The allegations in the Claim Statement are briefly as follows :

While the employee Sri B. Deivachilai, Cashier/Clerk under the Respondent/Bank was working at Currency Chest, Royapettah, Chennai, he was served with a show cause notice by the Disciplinary Authority (General Manager) on 06-02-2003 alleging that on 13-09-2002 at Canara Bank, Currency Chest (Metro), T.C. Street, Chennai, he committed a misconduct, which he denied through his reply dated 22-02-2003. The Management only forwarded to him a copy of letter dated 30-09-2002 of Canara Bank and declined permission to peruse other documents with an advice to submit his reply which is apparently indicative of the negative attitude of the Management to the legitimate request of the employee to peruse documents. The Disciplinary Authority treating the reply dated 18-03-2003 as not satisfactory charge sheeted the employee on 14-06-2003. An enquiry was commenced on 24-07-2003 and concluded on 27-10-2003. It is apparent from the enquiry proceedings that the defence representative objected bringing on record the purported complaint of the Canara Bank without production of the officials of the bank for cross-examination requirement for which was over-ruled and marked Ex. MEX3 and Ex. MEX5. The Enquiry Officer overruling the objections of the defence representative allowed bringing on record replies of the employee such as reply dated 19-03-2003 marked as MEX8, that dated 25-11-2002 marked as MEX10, that dated 22-2-2003 marked as MEX11, that dated 18-03-2003 as MEX 13 which had been rejected prior to framing the charge sheet in violation of Article 20 (3) of the Constitution and the charge sheet dated 14-06-2003 marked as MEX 14. Only an Officer of the Currency Chest, Royapettah

was examined marking all the documents through him. Placing reliance on the documents marked without examining the concerned persons vitiates the enquiry. The whole enquiry proceedings are vitiated. The employee has been denied reasonable opportunity to defend. The findings of the Enquiry Officer are perverse and vitiated. The conclusion of the Disciplinary Authority is not based on the documents but is based on his own surmise. An opportunity was not afforded to the employee to offer comments on the findings of the Enquiry Officer and the Disciplinary Authority, thus vitiating the entire proceedings. The dismissal of appeal by the Appellate Authority was not with a speaking order and thus not with proper application of mind. It is prayed that the reference be answered holding the action of the Management against the employee as illegal, not maintainable and is liable to be set aside.

4. The allegations in the Counter Statement are briefly as follows :

The Respondent Bank has Currency Chest at Royapettah branch. The designated Shroff called POTDAR shall take cash to RBI or to Currency Chests of other banks for remittance as decided by the remitting bank. The Respondent/Bank used to receive continuous diversion orders of lifting huge cash to currency chest of Canara Bank. POTDARs are required to ensure that the opening of remittance boxes and detailed examination of currency notes are done before him in a disciplined manner following lawful orders of his superiors. He shall not absent himself from duty without prior written permission of the Officer-in-Charge of Cash Receiving Office. On completion of his assignment, he has to give a certificate duly signed showing the entire history of cash remittance sent in a closed cover to the remitting bank. The petitioner on 13-09-2002 as POTDAR of Royapettah Currency Chest of the Respondent/Bank was in-charge of cash remittance of Rs. 10.00 crores to Currency Chest of Canara Bank at Thambu Chetty Street, usual patron of the Respondent/Bank. A letter dated 30-09-2002 was received from Canara Bank reporting the petitioner to have had been relieved on completion of the assignment on 21-09-2002. It was also informed that the petitioner did not attend Canara Bank office on 16-09-2002 and 19-09-2002. Further information revealed was that the closed cover handed over to the petitioner enclosing POTDAR certificate, order of relief of POTDAR on 21-09-2002 also mentioning his above absence instead of being delivered to the addressee, the petitioner came back to the Canara Bank opening it and with the letter in his hand questioned the Cash Receiving Office regarding the mentioning about the two days absence of the petitioner in the relieving order, which was

politely replied to. Canara Bank reported the unpleasant behavior of the petitioner with a request not to send such persons as POTDAR. It also expressed its constraint to continue patronage to the Respondent/Bank in lifting the cash in future. The conduct of the petitioner was negligent. It amounts to wilful in subordination, gross negligence, prejudicial to the interests of the Respondent Bank. Accordingly, he was charged with misconduct. The petitioner actively participated in the enquiry with a defence representative. He was given adequate opportunities in the enquiry following principles of natural justice. He was given copies of the brief, copy of the findings of the Enquiry Officer to which he offered his comments. The proposed punishment of "be brought down to lower stage in the scale of pay by one stage for a period three years without cumulative effect" was met by the petitioner with a personal hearing on 18-06-2004. On 12-08-2004, the punishment was imposed under 6(e) of Memorandum of Settlement dated 10-04-2002 which was confirmed by the Appellate Authority by dismissing the appeal on 30-06-2006.

5. In the rejoinder it is stated, an epitome of which is as follows :

The signatory to the POTDAR certificate and order of relief dated 21-09-2002 is Chief Manager of the Canara Bank, Currency Chest, T.C. Street, Chennai whereas in the communication dated 30-09-2002 containing allegations against the petitioner, the signature is that of a Senior Manager, a subordinate to the Chief Manager. The testimony of the Respondent/Bank Officer during the enquiry is that the letter dated 30-09-2002 was received through post, which the petitioner states, such happening of receiving letter posted on the very same day would never occur and it is indicative of bias against the petitioner. It is also come on record through the Respondent official that the Respondent has sent remittance thereafter also to the Canara Bank. The finding of the Enquiry Officer is not based on admissible legal evidence.

6. The following points arise for determination :

- (i) Whether the action of the Management of Indian Bank imposing the punishment of "be brought to the lower stage in the scale of pay by one stage for a period of three years without cumulative effect" on the petitioner is legal and justified ?
- (ii) To what relief the petitioner is entitled ?

Point No. 1

7. On behalf of the Petitioner Union, no oral evidence was adduced. Ex. W1 to Ex. W 19 were marked on consent.

On behalf of the Respondent/Management MW1 was examined and Ex. M1 was marked.

8. Sri Deivachilai, the delinquent employee whose cause is espoused herein by the Petitioner Union while was working as a Clerk/Cashier under the Respondent/Bank was put incharge of the Currency Cash Chest at Royapettah as POTDAR with the assistance of a Peon as his escort on 13-09-2002. The Respondent/Bank, as any other major public sector financial institutions, has Currency Chests at certain designated branches which are the mini-issue-department of the RBI with such a Currency Chest at Roayapettah where to the petitioner was deputed. On 13-09-2002, there was a remittance of Rs. 10 crores which was ordered to be remitted to the Currency Chest of Canara Bank at Thambhu Chetty Street, one of the regular customers/patron. POTDARs are custodians of the cash till it is taken over by the Cash Receiving Office against proper receipt. On completion of the said assignment, POTDARs are required to give a certificate duly signed by them to the Cash Receiving Office giving the entire history of cash assignment and report is to be sent in a sealed cover by the Cash Receiving Office to the remitting bank. So much so, POTDAR could not absent from duty without prior written permission from the Cash Receiving Office. Even in case of ordinary illness, necessitating casual absence from duty, a medical certificate from a Govt. Medical Officer is required, which fact is undisputed. The petitioner acted negligently in the discharge of his duties as is revealed from the letter dated 30-09-2002 which shows that on 21-09-2002, the petitioner was relieved on completion of his assignment and further that he did not attend Canara Bank Currency Chest Office on 16-09-2002 and 19-09-2002. It further shows that the petitioner who had been entrusted with a closed cover containing POTDAR certificate, order of relief dated 21-09-2002 which is also found mentioned in it his absence from duty on 16-09-2002 and 19-09-2002 instead of being delivered to the Respondent/Bank was opened by him by breaking the seal and with the letter in his hand, he questioned the Receiving Bank for the mention of his absence on the two days in the two days in the relieving letter. The same was politely replied by the Receiving Bank who was not pleasant with the unpalatable behavior of the petitioner and who thereafter requested the Respondent/Bank not to send such persons for cash remittance and further informed that they have constraint to reconsider their patronage extended to the Respondent/Bank. Pursuant thereto, the petitioner was issued a show cause notice on 06-02-2003 for acts of wilful insubordination, doing acts prejudicial to the interests of the bank and for negligence of duties. His reply having been found not satisfactory, he was charge sheeted and an enquiry was held, in the culmination of which the Enquiry Officer on 25-02-2004 entered a finding that the petitioner is guilty of gross misconduct, the same was communicated to the petitioner on 08-03-2004 and a punishment was

proposed by the Disciplinary Authority on 31-03-2004 affording him an opportunity of being heard personally on 10-06-2004, which the petitioner did not avail. Thereupon, the Disciplinary Authority imposed the punishment of "be brought to lower stage in the scale of pay by one stage for a period of three years without cumulative effect." On 12-08-2004, the appeal preferred was dismissed on 01-10-2004.

9. The petitioner herein seeks to challenge the punishment order imposed on him as illegal and unjustified by getting the issue referred to this Tribunal. The contentions of the petitioner are that the finding entered by the Enquiry Officer placing reliance on the documents admitted in evidence without examining the persons competent to prove them is vitiated and the finding is perverse. It is further pointed out that the relief letter dated 21-09-2002 which was signed by the Chief Manager of the Canara Bank, Currency Chest, the letter dated 30-09-2002 containing allegations against the petitioner is seen signed by a Senior Manager, who is subordinate to the Chief Manager hereby signifying to convey that there is some bias against the petitioner to tempt the Canara Bank to adopt a tainted action against the petitioner by procuring a letter like that dated 30-09-2002. Another contention of the petitioner is that as could be seen from the evidence of Respondent Bank official even after the alleged occurrence in question giving rise to the allegations against the petitioner, the Respondent/Bank has sent remittance to the Currency Chest of Canara Bank thereby signifying to convey that though the Canara Bank has expressed its constraint not to receive further remittances from the Respondent/Bank, it has given a go by to that and the normal relations between the two sister PSU banks have been restored. By this it is sought to project that the so-called incident at the Currency Chest of Canara Bank has not caused any prejudice to the Respondent/Bank. Another contention of the petitioner is that the finding of the Enquiry Officer is not based on admissible legal evidence.

10. As against this, the contentions of the Authorised Representative of the Respondent/Bank are that the petitioner actively participated in the enquiry. His representative had adequate opportunities to defend him. The enquiry was held by following the principles of natural justice. He further pointed out that the letter dated 21-09-2002 can automatically go into evidence since it emanated from a Public Sector Bank to another Public Sector Bank in normal course of business. This contention cannot be readily accepted for the reason that it contains recitals requiring specific proof according to formality. The contention of the petitioner that his reply letter given to the Management was admitted in evidence illegally which has been rejected from consideration in answer to the charge sheet is not a contention which could be safely availed by him since they are apt to be and are self-serving documents in his favour. There cannot be anything wrong

with the admission of a document in support of the Respondent which was rejected as against the petitioner. It is for the petitioner to prove that during his admitted absence on the 2 days he has acted legitimately so as not to leave any room for him to be arraigned by his authorities. The very provision appropriate to his situation he alleges has to be specifically proved by him to get him entitled to be relieved from the sanction of that provision owing to its transgression rather than merely claiming it by simply putting forth an argument to that score. It is not for him to merely argue that the alleged information given by him over phone to the incharge of the Canara Bank Currency Chest may not have been communicated to the Canara Bank. He has had to prove it by getting the concerned Officer examined. It is also pointed out by the Management that the certificate of the POTDAR contains the admission of the petitioner regarding his absence. Such an admitted fact is not to be proved otherwise. The petitioner has not availed any opportunity to challenge the admission of the petitioner who is a signatory to the said certificate. It is also pointed out that the charge sheeted employee viz. The petitioner never denied the handing over of the disputed cover to him. Strict rules of evidence are not to be applied to proceedings before this forum where preponderance of probabilities would suffice. The Respondent Representative invited this Court's attention to the decision of the Apex Court in *State of Haryana Vs. Ratan Singh* 1977 (TLS) 26 508 where his lordship Justice VR Krishna Iyer, Judge (as he then was) held as to substantiate above holding that "strict rules of evidence under the Indian Evidence Act may not apply and all materials which are logically probative for a prudent mind are permissible". The non-examination of Canara Bank officials is of legal consequence but not material in this case since even otherwise from the POTDAR certificate, it could be found proved that the petitioner was in errors. The simple point was there some evidence or was there no evidence not in the sense of technical rules governing regular court proceedings but in a fair common sense way as men of undertaking and wordly wisdom will accept. The argument of the petitioner regarding the disagreement of the Disciplinary Authority with the Enquiry Officer regarding an aspect of a charge is met by the representative of the Respondent by pointing out the fact that as per settled law, the finding of the Enquiry Officer are only his opinion on the materials but such findings are not binding on the Disciplinary Authority as the decision taking authority is the punishing authority and, therefore, that authority can come to its own conclusion. It is after affording an opportunity to the petitioner by obtaining his comments and after recording reasons for such disagreement that the Disciplinary Authority came to the conclusion.

11. In this case, discernibly the petitioner himself confessed his absence for two days in the POTDAR

certificate. In his belated leave applications, the reasons stated for the leave is stomach pain but what he stated to the Canara Bank official was that he has had to go to Tirupati which together run mutually inconsistent.

12. On a consideration of the entire materials, it is only to be held that there is nothing illegal in the conclusion arrived at by the Enquiry Officer. The petitioner was duly represented, he actively participated in the enquiry proceedings through his authorized representative. The evidence required in proceedings like this need only of the nature of a preponderating probability. There is no allergy even to hearsay evidence provided there is reasonable nexus and reliable credibility to the hearsay evidence. Here the evidence is fully probalising the case of the Respondent as against the petitioner. The conduct of petitioner/delinquent has been negligent in the discharge of his duty. As proved from the letter dt. 30-09-2002 of the Canara Bank, it went to such an extent as to intimate its Sister Bank, the Respondent/Bank the fact that it was upto reconsider the question of accepting remittances made by the Respondent/Bank of its Currency Chest. Though, from the evidence of Respondent Bank official, it has come out that even thereafter the Canara Bank has continued to accept remittances, it does not mitigate the negligent conduct that emanated from the petitioner which is a misconduct as mentioned in the bipartite settlement between the Respondent/Bank and the employee. This change does not exonerate the petitioner from his delinquency already committed. It is clearly established that the petitioner unauthorizedly absented himself from duty without any previous information to the Cash Receiving Office. There is nothing to show that the Canara Bank official are enmically disposed towards the petitioner to trap him with some false allegations by sending a letter like the one dt. 30-09-2002 except a bald allegation of bias imputed. It is clearly established that the petitioner conducted himself negligently and the same amounted to misconduct. It is made out that the petitioner did not bestow the requisite care and caution in the exercise of his duty. Such conduct cannot go unpunished. Therefore, the Enquiry Officer found him guilty of misconduct and imposed on him the punishment of "be brought to lower stage in the scale of pay by one stage for a period of three years without cumulative effect" after having given him adequate opportunities of being heard. I find that the punishment of "be brought to lower stage in the scale of pay by one stage for a period of three years without cumulative effect" is legal and justified. Regarding the quantum, of punishment, though this Tribunal entertains a view that the same is a little bit on the higher side, it being not vested with power to interfere with it, the same is to remain intact.

Point No. 2

13. Accordingly, the punishment imposed does not call for interference by this Tribunal. The petitioner is, therefore, not entitled to any relief.

14. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 3rd March, 2009).

A. N. JANARDANAN, Presiding Officer

Witnesses Examined :

For the I Party/Petitioner : None

For the II Party/Mgmt. : MW1 Sri K. Natarajan

Documents Marked :

On the petitioner's side

Ex. No.	Date	Description
(1)	(2)	(3)
Ex. W1	31-10-2002	Letter No. CO(S) : CH : VIG : C/1074 of Asstt. General Manager, Indian Bank, Circle Office, Chennai (South) seeking explanation from Sri B. Deivachilai.
Ex. W2	25-11-2002	Explanation submitted by Sri. B. Deivachilai.
Ex. W3	06-02-2003	Show Cause Notice No. : CO(S) : CH : VIG : DPC/537 by the Deputy General Manager/Disciplinary Authority.
Ex. W4	22-02-2003	Sri B. Deivachilai while denying the allegations, sought for perusal the materials mentioned therein for submission of reply to the show cause notice.
Ex. W5	26-02-2003	The letter No. CO(S) : CH : VIG : DPC/537 from Assistant General Manager, Circle Office, Chennai South to Sri B. Deivachilai enclosing only a xerox copy of letter dated 30-09-2002 from Currency Chest (Metro), Canara Bank, 142, T.C. Street, Chennai addressed to Officer-in-Charge, Royapettah Currency Chest and silent about the request of Sri B. Deivachilai.
Ex. W6	19-03-2003	Reply submitted by Sri B. Deivachilai to the show cause notice No. : CO(S) : CH : VIG : DPC/537 dated 06-02-2003.
Ex. W7	14-06-2003	Charge sheet No. : CO(S) : CH : VIG : DPC/537 served on Sri B. Deivachilai, the CSE.

(1)	(2)	(3)	(1)	(2)	(3)
Ex. W8	24-07-2003 and other Dates	Copy of the enquiry proceedings held against the CSE Sri B. Deivachilai by Sri S. Sundararajan, Enquiry Officer alongwith the documents marked by the Management as Management Exhibits.			Director of Indian Bank in terms of Clause-14 of Bipartite Settlement dated 10-04-2002 against the order of punishment of General Manager/Disciplinary Authority.
Ex. W9	17-11-2002	Summing up of the Presenting Officer, Sri M.R. Vittal on the enquiry proceedings held against Sri B. Deivachilai.	Ex. W17	01-07-2006	Letter No. HO : HRM : DP : CELL : 2978 : 2006 dated 01-07-2006 from Chief Manager (HRM) to Sri B. Deivachilai informing the disposal of the appeal by the Executive Director.
Ex. W10	30-11-2003	Summing up of the Defence Representative, Sri K.J. Arunachalam on the enquiry proceedings held against Sri B. Deivachilai.	Ex. W18	02-08-2006	I.D. raised by the 1st Party Union before the Assistant Labour Commissioner (Central) with all relevant enclosures.
Ex. W11	08-03-2004	Letter No. : CO(S) : CH : VIG : DPC/537 of General/Disciplinary Authority enclosing the findings of Enquiry Officer dated 25-02-2004, wherein the Disciplinary Authority has indicated that he disagreed with findings of Enquiry Officer as mentioned therein.	Ex. W19	01-03-2007	Rejoinder submitted by the 1st Party Union to the reply of the Management dated 5th February 2007 with the enclosure of working sheet of salary loss due to the illegal and unwarranted punishment imposed on the employee.
Ex. W12	23-03-2004	Sri B. Deivachilai reply to letter No. : CO(S) : CH : VIG : DPC/537 dated 08-03-2004 of the General Manager/Disciplinary Authority, Circle Office, Chennai South.	On the Management's side		
Ex. W13	31-05-2004	Second Show Cause Notice No. : CO(S) : CH : VIG : DPC/537 by the General Manager/Disciplinary Authority to the CSE Sri B. Deivachilai and fixing a personal hearing therein.	Ex. M1	01-07-2006	Order of Appellate Authority sent to Charge-sheeted Employee.
Ex. W14	18-06-2004	Reply to the Second Show Cause Notice No. : CO(S) : CH : VIG : DPC/537 served on Sri B. Deivachilai on 21-08-2004 by the General Manager/Disciplinary Authority.	नई दिल्ली, 1 मई, 2009		
Ex. W15	12-08-2004	Punishment Order No. : CO(S) : CH : VIG : DPC/537 served on Sri B. Deivachilai on 21-08-2004 by the General Manager/Disciplinary Authority.	<p>का. आ. 1416.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक ऑफ इण्डिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण पटना के पंचाट [संदर्भ संख्या 2(C)/2008] को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-4-2009 को प्राप्त हुआ था।</p> <p>[सं. एल-12011/99/2007-आई आर (बी-II)]</p> <p>राजेन्द्र कुमार, डेस्क अधिकारी</p> <p>New Delhi, the 1st May, 2009</p> <p>S.O. 1416.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. No. 2(C)/2008] of the Industrial Tribunal, Patna now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 29-4-2009.</p> <p>[No. L-12011/99/2007-IR (B-II)]</p> <p>RAJINDER KUMAR, Desk Officer</p>		
Ex. W16	01-10-2004	APPEAL preferred by Sri B. Deivachilai before the Executive			

ANNEXURE**BEFORE THE PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL, PATNA****Reference Case No. 2(C) of 2008**

Between the Management of Central Bank of India, B. Block, 2nd Floor, Maurya Lok Complex, Patna and their workman Sri Diwakar Prasad Choudhary, represented by the General Secretary, Industrial Mazdoor Congress, Rajbanshi Nagar, Patna.

For the Management : Sri P.K. Nagbanshi,
Representative of
Central Bank of India.

For the Workman : Sri D. Ram, General
Secretary of INTUC,
Bihar.

Present : Vasudeo Ram, Presiding Officer

AWARD

Patna, the 20th April, 2009

By adjudication order No. L-12011/99/2007-IR(B-II), dated 8-1-2008, the Govt. of India, Ministry of Labour, New Delhi under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity) has referred the following dispute between the management of Central Bank of India, B. Block, 2nd Floor, Maurya Lok Complex, Patna and their workman Sri Diwakar Prasad Choudhary represented by the General Secretary, INTUC, Bihar for adjudication to this Tribunal on following :

"Whether the action of the management of Central Bank of India in not considering the name of Shri Diwakar Prasad Choudhary, whose name was sponsored through Employment Exchange, Bhagalpur for regularisation in selection process and terminating his services w.e.f. February, 2007 is legal and justified. If not, what relief the concerned workman is entitled to?"

2. Both the parties appeared on notice and filed statement of claim and the written statement.

3. On last several dates neither workman is present nor any steps has been taken. I presume that the workman or his representative is not interested to pursue this reference case. Under the circumstances, I hereby pass a "No dispute Award".

3. And this is my Award.

VASUDEO RAM, Presiding Officer

नई दिल्ली, 1 मई, 2009

का. आ. 1417.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 101/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-4-2009 को प्राप्त हुआ था।

[सं. एल-12025/1/2009-आई आर (बी-11)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 1st May, 2009

S.O. 1417.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 101/2002) of the Central Government Industrial Tribunal, Hyderabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 29-4-2009.

[No. L-12025/1/2009-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT
HYDERABAD**

Present : Shri Ved Prakash Gaur, Presiding Officer

Dated the 6th day of April, 2009

Industrial Dispute L.C.I.D. No. 101/2002

Between :

Sri L. Ramu, ... Petitioner
S/o Venkata Rajaiah,
R/o 20-20-18/1, III Cross Street,
Aryapuram Post,
Tummalova, Rajahmundry.

AND

1. The Assistant General Manager, ... Respondent
The Bank of Baroda,
Old M.L.A Qtrs. Road,
Hyderguda, Hyderabad
2. The Senior Manager,
The Bank of Baroda, Fort Gate,
Rajahmundry, E.G. District

APPEARANCES

For the Petitioner : M/s Sudha, K. Ajay
Kumar & M. Govind,
Advocates

For the Workman : M/s. K. Srinivasa
Murthy, V. Umadevi &
C. Vijayashekar Reddy,
Advocates

AWARD

The Petitioner, Sri L. Ramu S/o Venkata Rajaiah, has filed this petition under Sec. 2A(2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. The Petitioner's contention that he belongs to SC community and he has passed 7th class in the year 1978-79 at Jawahar Bala Bhavan, Chikkadpally. Subsequently he joined in 8th class in Little Flower School, Narsingi, Rangareddy District. He has further submitted that he worked in Respondent bank on temporary basis in the year 1987 in Khairatabad branch and Hyderabad main branch for a total No. of 105 days. While working so, the Respondent bank issued a notification in English daily news paper, i.e., Indian Express on 18-8-91 calling for applications from candidates who have worked in the Respondent bank on temporary basis at any of the branches/offices in India as Peon for 90 days or more between 1-1-1982 to 31-12-1990 for consideration of their cases for filling up the vacancies of temporary/permanent employees by preparing a list of eligible candidates subject to the conditions, (1) that the candidates should have passed 7th standard and should not have studied 8th standard and completed 18 years but not have completed 26 years of age as on the date of 1st engaged as temporary peons, (2) their employment and appointment is subject reservation for SC/ST etc. pursuant to the above notification, Petitioner being eligible for the post of peon applied for the post and was selected and after due verification of the certificates and personal interview, was posted at Rajahmundry branch of Respondent Bank in 1991. Since then he was discharging his duties to the complete satisfaction of the superiors. Petitioner made applications for regularization of his services because other persons who were appointed along with the Petitioner were regularized. But no action was taken in respect of the Petitioner, then he was constrained to make several representations for his regularization. As a result of which when the Petitioner attended the bank to discharge his duty on 13-5-2000 Respondent No. 2 prevented him from attending the duties and informed orally that his services were terminated with immediate effect. No notice or order was issued to the Petitioner and no enquiry was conducted before terminating his services. The Petitioner approached Hon'ble High Court of A.P. and filed WP No. 20806/2000 which was disposed by Hon'ble High Court of A.P. with a direction to consider the case of Petitioner for reinstatement and regularization by order dated 21-11-2000. Pursuant to the above order, Petitioner made a representation to the Respondent to reinstate him, but Petitioner's request was rejected on the allegation that the certificates of Petitioner for class 8th is bogus. At that stage Petitioner again approached Hon'ble High Court of A.P. by filing WP No.

18599/2001 questioning the proceeding of the Respondent dated 10-3-2001, the same was disposed of by order dated 18-9-2001 with the direction that it is open to the Petitioner to establish his case. Petitioner approached this Tribunal against the termination order dated 13-5-2005. Petitioner contended that he has passed 7th standard and has studied upto 8th standard only. He fulfilled the requirement of the education for the post of peon. He submitted that he studied 8th standard in a village school and the same certificate was submitted to the Respondent bank. The Petitioner has contended that just because the District Education Officer expressed inability to confirm the certificate for want of the record, the certificate cannot be considered as bogus. No opportunity was given to the Petitioner to explain his case nor any enquiry was conducted by the Respondent, termination was without following the procedure of natural justice, which is illegal, arbitrary. Hence, liable to be quashed and Petitioner is entitled to be reinstated in service.

3. The Respondent bank has filed counter statement wherein the bank has submitted that the Petitioner was engaged as temporary peon. The bank has admitted that they issued a notification in the year 1991 in leading newspapers and also in vernacular language inviting applications from temporary employees of the bank who worked for more than 90 days as claimed by the Petitioner. The Petitioner applied for the post and he was engaged temporarily as peon in 1991 and was posted at Rajahmundry branch on temporary basis. He was empanelled for regularization in the bank's services. Subject to genuineness of the certificate produced by him in support of his age, educational qualifications and caste subject to the vacancies available. It has further been submitted that there was similarly placed temporary workers who applied for the said notification. The Respondent bank in the month of November, 1995 approved names of some candidates including the Petitioner for regularization. In order to regularize the services of the Petitioner the bank started scrutinizing the genuineness of the certificates submitted by the Petitioner in October, 1993. (i) caste certificate dated 24-6-1982 issued by the Tahsildar, R.R. District that he belongs to Madiga SC Caste, Annexure-I, (ii) certificate of education bearing certificate No. 9424 with Roll NO. 326 dated Nil of District Educational Officer, R.R. District from Board of Distt. Common Examinations mentioning the date of birth of Petitioner as 1-4-1965 and that he appeared for 7th class examination held in April, 1980 and declared that he was passed 8th class by awarding memo of marks. This certificate does not speak where he studied but it was attested by Head Master, Little Flower School, Narsingi, Rangareddy District, Annexure-II. It has further been submitted by the bank that they wrote a letter dated 2-1-96 to Head Master, Little Flower School, Narsingi, Rangareddy District requesting him to confirm whether the above certificate was issued by them and the genuineness of other details. This letter was returned undelivered with the

endorsement "School Closed". Subsequently the bank was perplexed to receive a reply dated 7-11-97 from the suitable officer to verify the certificate produced by the Petitioner and also credentials of the schools. Thereafter an officer was deputed to find out the correctness of certificate No. 0424 produced by the Petitioner who enquired into and has given a report dated 13-3-98, that the school in Narsingi is closed already. He met correspondent of the school at his residence, he can find only admission register where the name of Petitioner is recorded. As per their information, Petitioner joined 3rd class and continued upto 8th class in the school. He was as a private candidate for the exam as he was irregular to the school. No other record is available with the correspondents. The officer forwarded his report dated 12-8-98 that the correspondent confirmed that the certificate with no reference and dated issued by the District Common Examination Board, R.R. District through their school and the contents are true. The bank has further submitted that the signatory of the two letters in reply to banks undelivered letter and the correspondent who informed as above to the bank's senior officer and who issued the letter dated 12-8-98 is the same person. The regional office doubting the information given by the correspondent, took up the matter with zonal authority. The Zonal Authority deputed another officer to ascertain the facts in January, 1980, who cannot locate the school. Subsequently bank wrote a letter to District Education Officer, R.R. Distt., for verification. The Secretary, District Common Exams Board, R.R. District vide letter No. 131/2000 dated 3-2-2000 certified that the certificate No. 0424 pertaining to Petitioner, was not at all found in their records. The Head Master, Little Flower School, Narsingi, Rangareddy District referring to bank's undelivered letter dated 2-1-96 informed that the records are not traceable, the District Education Officer has given orders to find out the records and thereafter they will submit a verification report after verification. The Head Master's reply to undelivered letter dated 7-11-97, cast a doubt. the bank wrote a letter to the school authorities on 6-12-97 which was again reported undelivered with the same endorsement that "school closed". But interestingly bank again received a letter dated 12-1-98 from the Head Master, Little Flower School, Narsingi, Rangareddy District informing the bank that they have shifted the school from Narsingi to Golkonda and he asked to send the letter to new address of Golkonda. This strengthen the doubt of the bank regarding the genuineness of the certificate. The Petitioner vide his letter dated 31-3-98 submitted to the bank that the Little Flower School, Narsingi, Rangareddy District was closed and the records are available with the Head Master of the school at the address of the Golkonda. The bank again wrote a letter to the Regional Office of Hyderabad dated 18-5-98 requesting them to depute Officer to verify the certificate produced by the Petitioner and also the credentials of the school. The bank received letter dated 19-2-2000 of District Education Officer, R.R. District and they have stated that

they have verified the records and his Marks Sheet No. 0424, Roll No. 326 and certified that the certificate is correct. This letter was received by the Regional Office by hand through one Mr. Prasad said to be peon of the office of the District Education Officer. That two contradictory letters directly referred to District Education Officer, R.R. Dist. of AP-I Regional Office and the District Education Officer certified vide letter RC No. 16968/E2/99 dated 14-3-2000 that the above letter No. 131/2000 dated 3-2-2000 is genuine but the letter dated 19-2-2000 was not sent by them and is totally false and fake. They have also informed that certificate No. 0424 produced by the Petitioner is not at all found on verification of their record and it is bogus. They have further clarified that Mr. Prasad is not their employee. thus, the mark sheet produced by the Petitioner proved to be bogus and Petitioner has tried to secure employment in the bank by producing a fake educational certificate. He was disengaged from 13-5-2000. Since he was never engaged on permanent basis he was engaged on a casual basis, his disengagement did not require any notice, more so he secured job by submitting fake and bogus certificate regarding his educational qualifications. They have further submitted that after his disengagement, the Petitioner submitted a representation producing another Transfer Certificate dated 16-6-89 of Jawahar Balasadan Gurukul High School, Jawaharnagar, Hyderabad showing that he actually discontinued 8th class on 20-9-1979 and requested the bank for reinstatement. This amply proves that the certificate earlier submitted by the Petitioner be dismissed and he is not granted any relief by this tribunal.

4. Both the parties were directed to produce their respective evidence. Petitioner has submitted transfer certificate of Jawahar Balasadan Gurukul High School, Hyderabad bearing No. 6394 dated 16-6-89. He has also filed xerox copy of certificate of the Board of District Common Examination, R.R. District bearing Sl. No. 0424, R. No. 326, showing his date of birth to be 1-4-1965 issued by the District Education Officer, R.R. District, certified by Little Flower School, Narsingi, Rangareddy District. Ex. W3 xerox copy of the representation dated 18-5-2000. Ex. W4 is another representation dated 19-12-2001. Ex. W5 is the letter addressed by the Branch Manager of the Bank informing the Petitioner not to engage him in the bank's services. Ex. W6 is the order of WP 18599/2001 directing the Petitioner to approach the Respondent bank to establish his case that the certificates produced by him are genuine. Ex. W7 is the order in WP No. 20806/2000 directing the Respondent bank to consider the case of the Petitioner for reinstatement in services and also for regularization. Ex. W8 is the copy of the representation dated 8-2-2002. Ex. W9 is the affidavit of the Petitioner before Hon'ble High Court of A.P. Ex. W10 is the representation of the Petitioner dated 18-6-91. Ex. W11 is the newspaper notification dated 13-8-91. Ex. W12 is the letter of Little Flower School, Narsingi, Rangareddy District dated 7-11-97 regarding verification

of the records. Ex. W13 is the union's letter to the bank authority to regularize the services of the Petitioner. Apart from the above documentary evidence, Petitioner L. Ramu filed his affidavit as examination-in-chief and produced himself for the cross examination. In his cross examination L. Ramu has stated that he has passed 7th class in the year 1977-78. He has admitted that he has not filed class VII certificate in this court. He has admitted that at the time of the recruitment he has submitted 8th class certificate. He has further stated that he passed 8th class as private candidate in the year 1979-80 at Little Flower School, Narsingi, Rangareddy District. He has clarified that private candidate means appearing for examination directly by paying fees and without going to school. He has stated that Ex. W2 is 8th class certificate. He has denied the claim that Ex. W2 is a bogus certificate. He has stated that Ex. W1 is transfer certificate of Jawahar Balasadan Gurukul High School, from June-September, 1979. A question has been put before the Petitioner that he deputed a person claiming to be a representative of District Education Officer and submitted Ex. M1 to Respondent management. To this question the Petitioner has replied that he does not know about Ex. M1 and he can not say whether he has deputed any person on behalf of the District Education Officer or not.

5. The Respondent bank has also produced as many as 15 documents, Ex. M1 to M15. Important papers are letter of Secretary, District Common Examination Board, Ex. M12, letter of District Education Officer, Ex. M15 and transfer certificate Ex. M15. Apart from those documentary evidences the Respondent bank has filed affidavit of K.S. Babu, S/o K.B. Jagan Mohan Rao, Senior Manager, in respect of the Respondent bank and later as he was transferred from that place, filed affidavit of Sri Arvind Katkar, Senior Manager has produced him for cross-examination. Only suggestion has been given to the management witness that the certificate is genuine.

6. Written arguments has been filed on behalf of the Petitioner. I have gone through the pleadings of the parties that is the claim statement, counter statement, evidence produced by the parties and written arguments submitted on behalf of the Petitioner.

7. It has been submitted on behalf of the Petitioner that no notice of termination was given to the Petitioner and no show cause notice was given to Petitioner irrespective of alleged fake certificate. As such the action taken by the management is arbitrary, illegal and against the principles of natural justice in terminating the services of the Petitioner. As against this argument of the Learned Counsel for the Petitioner the Respondent counsel has submitted that the Petitioner's service regularization was depending upon the genuineness of the certificate produced by him at the time of joining the bank's service. When the matter of regularization was taken up the Petitioner's certificate was got verified in that respect, letter

was written to the District Education Officer regarding the genuineness of the certificate bearing Sl. No. 0424 with Roll No. 326 of the Petitioner which was showing that he passed 8th class examination from Board of District Common Examination. But this certificate does not mention to which school the examinee has studied. This certificate was simply attested by Head Master, Little Flower School, Narsingi, Rangareddy District. Though the Head Master, Little Flower School, Narsingi, Rangareddy District has stated to the Enquiry Officer that the Petitioner has studied from 3rd to 8th class in his school. But this contention or information of the Head Master is incorrect on the basis of the own admission of the Petitioner that he has appeared for examination as a private candidate. Which he means that one who has directly appeared for examination by paying the fees and who has not attended the school. Statement of L. Ramu dated 7-10-2003 during cross-examination meaning thereby that the Petitioner himself has stated before this tribunal that he did not go to any school regularly, he simply appeared for examination directly as a private candidate. Thus, the information given by the correspondent of the Little Flower School, Narsingi, Rangareddy District or the letter written by the Head Master, Little Flower School, Narsingi, Rangareddy District to the bank that the Petitioner has studied from his school appears to be false and without any basis. Not only that, if the Petitioner has passed the examinations from the Little Flower School, Narsingi, Rangareddy District then why he has filed another transfer certificate Ex. W1 issued by Jawahar Balasadan Gurukul High School, Jawahar Nagar, Hyderabad which is in his own paper showing that he has passed 7th, studied in class 8th in the year 1979 in that school and he left the school on 20-9-1979 as a regular student. This certificate produced by the Petitioner Ex. W1 further create not only doubt but it confirm the doubt and apprehension of the bank that the certificate produced by the Petitioner at the time of his appointment was not only fake, but it was fabricated with an intention to secure a bank job on the basis of a forged certificate alleged to have been issued by Board of District Common Examination. Or the Secretary of District Common Examination Board, R.R. District. Since one person cannot attend two schools at a time, if the Petitioner studied upto 8th class in Jawahar Balasadan Gurukul High School, then how he appeared for 8th class examination in the year 1980 from Board of District Common Examination which has written to the bank vide Ex. M12 who has informed the bank that the certificate bearing No. 0424 was not found at all in their record. Material Ex. M13 is also very important wherein District Education Officer, R.R. District has confirmed that the signature on certificate No. 0424 on verification is found to be bogus and a letter submitted by one Mr. Prasad was not given by the District Education Office, Mr. Prasad is not their office peon. This show that the Petitioner himself has tried to produce fictitious certificate during enquiry also. He has impersonated some

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Mr. Prasad as peon of the District Education Officer, to hand over the letter regarding genuineness of the certificate from the District Education Officer to the Bank's Office which has been found to be forged and fabricated one. Thus, the Petitioner has not been able to prove that the certificate produced by him at the time of his initial appointment in the services of the bank management was a genuine and correct certificate. But from the own admission and documentary evidence of the Petitioner this court has also come to the conclusion that Petitioner has produced a fake and bogus certificate of education to obtain employment in the bank's service which on verification and investigation has been found to be bogus, fake and fabricated one. The Hon'ble High Court of A.P. in its order dated 18-9-2001 in WP No. 18599/2001 has directed the Petitioner to establish his case that the certificates produced by him are genuine. Since he has not been able to prove that the certificate produced by Petitioner at the time of appointment was genuine his disengagement does not warrant any interference by this tribunal. The action of the management is justifiable. It does not require any interference or modification. From the above discussion, this tribunal is of the opinion that the Petitioner is not entitled for the relief as claimed by him and the Petition deserves to be dismissed with costs to the Respondent.

Award passed accordingly. Transmit.

(Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her, corrected by me on this the day of 6th day of April, 2009.)

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1 : Sri L. Ramu	MW 1 : Sri Arvind Katkar

Documents marked for the Petitioner

Ex. W1	: Copy of transfer certificate
Ex. W2	: Copy of memo of VIII class
Ex. W3	: Copy of representation dt. 18-5-2001
Ex. W4	: Copy of representation dt. 19-12-2001
Ex. W5	: Copy of letter addressed by the Branch Manager of Respondent bank WW1 dt. 14-2-2002
Ex. W6	: Copy of order in WP No. 18599/2001
Ex. W7	: Copy of order in WP No. 20806/2000
Ex. W8	: Copy of representation dt. 8-2-2002

Ex. W9	: Copy of writ affidavit filed by WW1 in WP No. 18599/2001
Ex. W10	: Copy of LR. Requesting for absorption on permanent basis
Ex. W11	: Copy of paper notification dt. 13-8-91
Ex. W12	: Copy of letter for verification of records dt. 7-11-97
Ex. W13	: Copy of representation dt. 22-11-97

Documents marked for the Respondent

Ex. M1	: Copy of LR. Dt. 19-2-2000 by District Education Officer
Ex. M2	: Copy of paper notification in Indian express dt. 13-8-91
Ex. M3	: Copy of caste certificate dt. 24-6-1982
Ex. M4	: Copy of memo of marks of WW1
Ex. M5	: Copy of undelivered letter to the Head Master, Little Flower School, Narsingi, Rangareddy District
Ex. M6	: Copy of LR. of Head Master Little Flower School, Narsingi, Rangareddy District dt. 7-11-97
Ex. M7	: Copy of Regional Officer letter to the Head Master, Little Flower School, Narsingi, Rangareddy District
Ex. M8	: Copy of the letter of the Head Master and correspondent, Little Flower School, Narsingi, Rangareddy District dt. 12-1-98
Ex. M9	: Copy of LR. of Petitioner dt. 31-3-98
Ex. M10	: Copy of LR. Dt. 13-8-98 of Bank Officer's report
Ex. M11	: Copy of the letter of the Head Master and correspondent, Little Flower School, Narsingi, Rangareddy District dt. 12-8-98 to Regional Manager of Respondent
Ex. M12	: Copy of LR. To Secretary, District Common Exam Board, RR District dt. 3-2-2000 by the Respondent
Ex. M13	: Copy of LR. No. 16968/E2/99 dt. 14-3-2000
Ex. M14	: Copy of representation by WW1 to Respondent dt. 6-6-2000
Ex. M15	: Copy of transfer certificate submitted by WW1

नई दिल्ली, 1 मई, 2009

का. आ. 1418.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, पणजी, गोवा के पंचाट (संदर्भ संख्या 20/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-4-2009 को प्राप्त हुआ था।

[सं. एल-12025/1/2009-आई आर (बी-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 1st May, 2009

S.O. 1418.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/98) of the Industrial Tribunal-cum-Labour Court, Panaji, Goa now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 29-4-2009.

[No. L-12025/1/2009-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI

(Before Smt. Anuja Prabhudessai, Presiding Officer)

Case No. IT/20/98

Shri D. J. Mahambrey rep by
President, Bank of Baroda Employees Congress
C/o Bank of Baroda, Mapusa Branch
Mapusa, Bardez, Goa. Workman/Party I

V/s

The Regional Manager,
Bank of Baroda,
Plaza Chambers, 4th Floor,
Dr. A. B. Road,
Panaji, Goa. Employer/Party II

Workman/Party I is represented by Adv. A. Nigalye

Employer/Party II is represented by Adv. P. J. Kamat

AWARD

(Passed on this 4th day of March, 2009)

By order dated 27-2-1998 the Government of Goa in exercise of powers conferred under Section 10(1)(d) of the Industrial Disputes Act, 1947, has referred to this Industrial Tribunal the following dispute for adjudication :

“Whether the action of the management of Regional Manager, Bank of Baroda, Panaji, Goa in awarding the punishment of reduction of his pay to the next

lower stage up to a period of two years and withdrawal of special allowance, on Shri D. J. Mahambrey is legal and justified? If not, to what relief the said workman is entitled?”

2. On receipt of the reference IT/20/98 was registered. Notices were issued to both parties. Party I filed his claim statement at Ex. 5. The Party II filed its written statement at Exb. 6 and the rejoinder of the Party I is at Ex. 7.

3. The Party I was employed as an Agricultural Assistant with the Party II at its Mapusa branch office. The Party I had availed from the Party II a loan of Rs. 10,400 for purchase of scooter under Vehicle Loan Scheme. The Party II had alleged that the Party I had misutilised the loan availed from the bank. It was further alleged that on 4-4-90 the Party I had threatened Shri L. R. Kunder, the Joint Manager of Mapusa branch for deducting his income tax. It was also alleged that the Party I was frequently leaving the office during office hours and not adhering to office timings and discipline. It was further stated that on 22-10-90 despite being on sick leave the Party I came to the branch at about 12 : 30 p.m. and was found playing carom. It was also alleged that the Party I was advised by his superior to perform his duties and to adhere to the office discipline he used to state “u report I do not care”. The Party I was issued charge sheet dated 30-4-90 for the said acts of misconduct. Shri S. S. Amonkar was appointed as an Inquiry Officer and Shri C.A.F. Dias was appointed as a Presenting Officer. The Party I had participated in the said enquiry. He was initially represented by Shri Borkar and subsequently by Shri Naik. The enquiry officer submitted his findings on 29-3-93 wherein the Inquiry Officer held that the Party I had admitted the charge of misutilisation of loan availed from the bank and based on this admission the said charge was held to be proved. The Inquiry Officer held that the management had failed to prove that the Party I had threatened Shri Kunder. The Inquiry Officer further held that the management also failed to prove that the party I was not punctual or that he was not adhering to office hours and discipline. The enquiry officer also held that the management had failed to prove that the Party I had visited the bank premises on 22-10-90 and that he was found playing carom hence the said charges were held not to be proved. The enquiry officer held that the management has proved that whenever the senior officers used to advise the Party I he used to state that he does not care and used to tell them to report to the higher authorities. Hence the said charge was held to be proved.

4. Copy of the findings was given to the Party I and he was given an opportunity to give his say on the said findings. The Party I did not give his say on the said findings and on 28-8-93 the disciplinary authority awarded punishment of deduction of pay to the next lower stage upto a period of two years and withdrawal of special allowance. The appeal filed by the Party I before the appellate authority was dismissed.

5. The Party I has stated that he had not admitted the charge of misutilisation of loan amounts and that what he had in fact admitted for purchase of vehicle. The Party I has stated that he had made an application to withdraw the said admission however the same was not allowed by the Inquiry Officer. The Party I has stated that the charge of misutilisation of funds and insubordination was not proved against him. He has stated that the Inquiry Officer was biased and that the enquiry was conducted in violation of the principles of natural justice. The Party I has stated that the findings of the Inquiry Officer are perverse. The Party I has therefore claimed that the punishment imposed is improper and unjustified. The Party I has therefore claimed all the privileges due to him since the date of the order.

6. The Party II had denied that the charge-sheet was baseless or that the enquiry officer was biased. The Party II has stated that the Inquiry was held in consonance with principles of natural justice and that the findings of the enquiry officer are based on material on record. The Party II has stated that the cause of the Party I is not espoused by the union.

7. Based on the aforesaid pleadings following issues were framed :

1. Whether the union/Party I proves that it has raised and espoused the dispute of the workman?
2. Whether the union/Party I proves that the enquiry held against the workman is not fair, proper and impartial?
3. Whether the charges of misconduct levelled against the workman are proved to the satisfaction of the Tribunal by acceptable evidence?
4. Whether the union/Party I proves that the action of the Party II in awarding punishment of reduction of pay to the workman to the next lower stage upto a period of two years and withholdings of his special allowance is mala fide, illegal and unjustified?
5. Whether the workman is entitled to any relief?
6. What Award?

8. Issues no. 1, 2 and 3 were treated as preliminary issues. Both parties have adduced evidence on these issues. Lnd. Shri Nigalye has adduced evidence at Ex. 15. Ld. Adv. Shri Kamat has filed written arguments on behalf of Party II and the same are at Ex. 16. I have perused the records and considered the argument advanced by the respective parties and my findings on the aforesaid preliminary issues are as under :

9. **Issue No. 1 :** By reference dated 27-2-98 the Central Government has called upon this Tribunal to adjudicate whether the action of the management of Regional Manager,

Bank of Baroda, Panaji, Goa in awarding the punishment of reduction of his pay to the next lower stage up to a period of two years and withdrawal of special allowance on D. J. Mambrey is legal and justified, If not, to what relief the said workman is entitled?

10. The aforesaid reference does not arise out of termination of the service of the Party I by either of various modes. This being the case the Party I could not invoke Section 2A to raise an Industrial Dispute and what could be and has been invoked under Section 10(1)(d) is in fact an "industrial dispute" within the meaning of Clause K of the Industrial Disputes Act. In terms of Section 2(k) "industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons;" A catena of apex court decisions has crystallized the legal position that a dispute between an individual workmen and an employer, other than the dispute arising from termination which is covered by Section 2A, cannot be an industrial dispute as defined in Section 2(k) of the Act unless it is espoused by an union or supported by substantial section of the workmen. In the absence of such espousal by the union or support by a Section of the workmen the dispute would continue to retain its character as an individual dispute and it would not par take the character of an "industrial dispute" so as to give jurisdiction to the appropriate government to make a reference for adjudication and also to the Tribunal to adjudicate upon such reference. Hence the question which needs to be determined is whether the dispute referred to this Tribunal vides order dated 27-2-98 is an industrial dispute within the meaning of the act.

11. Learned advocate Shri Nigalye has argued that the reference itself indicates that the dispute was referred to the Tribunal pursuant to the orders passed by the Hon'ble High Court in the writ petition filed by the union. Learned advocate Shri Nigalye therefore contends that the reference itself shows that the dispute was espoused by the union. In my considered view these arguments have no merits. As rightly argued by Shri Adv. P. J. Kamat mere making of the reference by the government does not give rise to the presumption that the dispute raised is an industrial dispute which is espoused by an union and the employer is not precluded from challenging the espousal of the cause by the union and it is for the adjudicating authority to ascertain from the material on record whether the dispute is one as defined under Section 2(k) of the Act. In the instant case, in para 18 of the written statement the Party II has specifically denied that the dispute was espoused by the union. The Party II has also stated that though the claims statement was stated to have been signed by the secretary (sic) of the union, the Party I had not produced any authority to substantiate that the signatory

was the secretary of the union. In view of these objections raised by the Party II, the Party I was required to prove that the dispute in question was espoused by the union. In the case of J. H. Jahdav V/s Forbes Goka reported in 2005 (3) SSC 202 the apex court has held that "as far as espousal is concerned there is no particular form to describe such espousal. Doubtless the union must normally express itself in the form of a resolution which should be proved if it is in issue. However, proof of support by the union may also be available aliunde. It would be depend on the facts of each case."

12. In the case of Deepak Industries Ltd. V/s State of West Bengal reported in 1975 Lab. I.C. 1153 the division bench of Calcutta High Court has held that "when the authority of the union is challenged by the employer it must be proved by production of material evidence before the Tribunal, to which such a dispute has been referred, that the union has been duly authorized either by a resolution of its members or otherwise that it has the authority to represent the workman whose cause it is espousing. Mere fact that the said union is registered under the Indian Trade Unions Act is not conclusive proof of its real existence or the authority to represent the workmen in the reference before the Tribunal. Mere negotiations by some official of the union with the employees for conciliation or executing certain documents on behalf of the workmen prior to the reference are no conclusive proofs of the authority of the union to represent the workman whose dispute it is alleged to be espousing before the Tribunal. It is immaterial whether the said union is a general union of the workmen of a particular industry or it is a union of the particular establishment relating to which the dispute has arisen between it and its workmen".

13. In the instant case the Party I has not produced any such resolution nor adduced any material evidence before this Tribunal to prove that the union was authorized to espouse the cause and that the union had in fact espoused the cause of the Party I. It is also pertinent to note that the cause title in the claim statement states that the workmen was represented by Bank of Baroda Employees Congress. The said claim statement is verified by the workman and it is stated to have been signed by the President. It is to be noted that the name of the said President was not stated in the claim statement and the Party II had raised objections in the written statement as regards the identity of the signatory to the claims statement and his authority to sign the same. These averments were not rebutted by the union by filing the rejoinder, but the rejoinder was filed by the Party I himself. It is also to be noted that no such details were given even in the rejoinder filed by the party I. The records further indicate that the vakalatnama in favour of the advocate for the Party I was not signed by the President of the union or by any other office bearer of the union but was signed by the Party I himself as the secretary of the union. In the absence of any

evidence to prove the espousal by the union, it has to be inferred that the said vakalatnama was signed by the Party I in his individual capacity and it is evident that the Party I had signed the vakalatnama as a secretary only to given an impression that the cause was espoused by the union. This is further evident from the fact that there is absolutely no evidence on record to indicate that the union had pursued the reference in any manner. Under these circumstances, in my considered view the Party I has failed to prove that he was represented by the union or that the union had espoused his cause. Hence issue No. 1 is answered in the negative.

14. **Issue No. 2 :** This issue pertains to the fairness of the enquiry. The Party I has stated that the enquiry was held in violation of the principles of natural justice. He has challenged the fairness of the enquiry on the grounds that :

- (1) He was not allowed to withdraw admission of the charge of misutilisation, which was made due to misinterpretation of the facts and law.
- (2) He was not furnished documents which were relevant to the charges and vital to the defence.
- (3) He was not allowed to examine his witness and was denied the opportunity to examine his witnesses and to cross-examine management witnesses.
- (4) That the enquiry officer was biased against him.

15. Learned advocate Shri Nigalye has argued that on the first date of the enquiry the enquiry officer had recorded that the Party I had admitted the charge of misutilisation of loan amount. Learned advocate Shri Nigalye has argued that vide order dated 16-3-92 the Party I had sought to withdraw the said admission on the ground that it was made out of ignorance and misunderstanding. The enquiry officer disallowed the said application and held the Party I guilty of the charge one on the basis of the said admission. Learned Shri Nigalye has argued that refusal by the enquiry officer to withdraw the admission amounts to denial of natural justice and the same has caused serious prejudice to the Party I.

16. Learned advocate Shri P. J. Kamat has argued that on 29-1-92 the Party I in clear terms had admitted the charge of misutilisation of loan amount and that he had not sought withdrawal of the admission till 10-3-92. It was only after his new representative told him to withdraw the admission that the Party I sought withdrawal of the admission vide letter dated 16-3-92. Learned advocate Shri Kamat has argued that the enquiry officer cannot be faulted for not allowing the Party I to withdraw the application.

17. It is not in dispute that the Party I had availed from the Party II a loan of Rs. 10,400 for purchase of scooter from M/s Auto Service, Vasco under Vehicle Loan Scheme.

The Party II has alleged that on enquiring with M/s Auto Service, Vasco it was revealed that the Party I had not taken delivery of the vehicle and as such they had refunded the amount of Rs. 11,239 vide cheque no. 347975 dated 20-7-1989. The Party II had alleged that instead of depositing the said cheque in his vehicle loan account, the Party I had deposited the cheque in his savings account no. 2000 with Mapusa branch and thereafter utilize the said amount for some other purpose. Hence the Party I was charged for misuse of the loan amount sanctioned to him under Vehicle Purchase Scheme. The enquiry proceedings at Exb. E-1 colly indicate that on the first date of the enquiry that is on 29-1-92 the enquiry officer had read over the charge-sheet to the Party I and asked him whether he wanted to admit the charges levelled against him. The proceedings sheet dated 29-1-92 further indicates that the Party I had admitted the charge of misutilisation of the loan availed from the bank and that he had pleaded not guilty to the other charges levelled in the said charge-sheet. In view of this admission the enquiry officer had directed the Presenting Officer to adduce evidence only as regards the remaining charges. Accordingly, the management had adduced its evidence. The evidence of the management was concluded on 5-3-92 and the matter was posted for defence evidence on 10-3-92. The Party I had sought adjournment on 10-3-92 and on 7-4-92 the Party I filed an application for withdrawal of the admission of charge 1 on the ground that he had admitted the charge 1 due to his ignorance and that the enquiry officer had not asked him whether he had understood the charge. The enquiry officer had disallowed the Party I to withdraw the said admission.

18. The records more particularly the proceedings sheet dated 29-1-92 indicates that on 29-1-92 the enquiry officer had read over the charge-sheet to the Party I and the Party I had admitted the charge no. 1. The statement of the Party I that the Inquiry Officer had not asked him whether he had understood the charges levelled against him cannot be believed as a perusal of the said enquiry proceeding sheet clearly indicates that after the Party I had admitted the said charge the enquiry officer had once again ascertained from the Party I whether he was admitting the charge no. 1 and the Party I had reiterated that he was admitting the charge no. 1. The enquiry proceeding sheet dated 29-1-92 wherein it is so recorded was duly signed by the Party I as well as by his representative. The Party I has admitted in his cross-examination that the proceeding sheet dated 29-1-92 was recorded in his presence and in presence of his representative and that a copy of the same was given to him. He has stated that he is a B. Com graduate. It is therefore evident that the Party I as well as his representative was well aware about recording of the admission in the said proceeding sheet. The records of the enquiry proceedings further indicate that the Party I and his representative had attended the enquiry on 3-3-92, 5-3-92, 10-3-92 and 7-4-92 and had fully participated in the

enquiry. The records indicate that during this period the management had examined all its witnesses and the said witnesses were duly cross-examined by the representative of the Party I. The Party I has admitted in his cross-examination that the proceeding sheets of these dates were recorded by the Inquiry Officer in his presence. On none of these dates the Party I and his representatives had brought to the notice of the Inquiry Officer that the admission was made on misrepresentation of facts and law or that the admission was wrongly recorded as deposed by the Party I in his evidence before the Tribunal. The records indicate that it was only when the matter was posted for defence evidence that the Party I had filed an application for withdrawal of the said admission. This application was filed more than a year from the date of the admission. The evidence of the Party I indicates that he had written the said letter dated 16-3-92 seeking withdrawal of the admission as per the instructions of Shri P. S. Naik. This statement itself indicates that the admission was sought to be withdrawn as an afterthought only as per the instructions of the defence representative. This fact falsifies the allegation of wrong recording of the admission or making admission on misrepresentation of law and fact. Hence, the enquiry cannot be said to have been vitiated for not allowing withdrawal of the admission.

19. The Party I had deposed him that he was not furnished documents and was not allowed to examine witnesses as sought by him in the course of the enquiry vide application dated 23-5-92 and that the same has caused prejudice to him. The enquiry proceedings at E-1 colly indicates that vide application dated 23-5-92 the Party I had stated that he wanted to examine Shri B. B. Bodke, Shri Duarte Fernandes, Shri S. V. Varde and Miss Alzira Parras. The Party I had also sought to produce documents at Sr. No. 1 to 10 listed in the said application. The proceeding sheet dated 27-5-92 indicates that enquiry officer had permitted the Party I to examine Shri B. Bodke and Shri Durate Fernandes as witnesses. The enquiry officer had however disallowed the request of the Party I to examine Shri Varde and Alzira Parras as his witnesses.

20. It is seen that both these witnesses, namely Duarte Fernandes and Shri Bodke, had stated that they did not wish to depose in the said enquiry. It may be mentioned here that the Party I had not taken any further steps to secure the presence of these witnesses nor has he shown that he was prejudiced on account of non-examination of these witnesses. It is also to be noted that the Party I had sought permission to examine Shri S. V. Varde and Alzira Parras in order to prove that the disciplinary action was used as a proof to control trade union movement. The enquiry officer had allowed the Party I to examine these witnesses on the ground that they were not material witnesses. It is to be noted that despite the opportunity given by the Inquiry Officer the Party I had not given his oral statement and had not subjected himself to the cross-

examination but had chosen to file a written statement. In the said written statement the Party I had alleged that he is alone member of INTUC/INBEF and fearing that he would report the irregularities he was being pressurized by such tactics. He had also stated that he had forwarded an envelope containing a complaint against the Sr. Branch Manager Mr. Mendes to the Regional Manager through the Sr. Manager of Bank of Baroda. The Party I had produced the copy of the complaint and the forwarding letter both dated 26-5-90. As stated earlier, the Party I had not subjected himself to cross-examination and as such the management had no opportunity to test the credibility of the said statement. Consequently, the allegations made in the written statement cannot prove victimization for union activities. It is pertinent to note that in the claim statement the Party I has vaguely averred that he was being victimized for trade union activities however no specific particulars of trade union activities or victimization were given. The Party I had also not adduced any evidence before this tribunal as regards his union activities and victimization. Consequently the Party I has failed to prove that these witnesses were material witnesses and that non-examination of these witnesses has caused prejudice to his defence.

21. The enquiry officer had also disallowed the Party I to produce the documents at Sr. Nos. 1 to 5, 7 and 10 on the ground the same were irrelevant. As regards the documents at Sr. No. 6 the Party I had stated that he wanted the said documents to verify whether the documents produced by the management at Exb. 13 to 15 were actually dispatched. The enquiry officer had directed the Presenting Officer to make available to the Party I the proof as regards dispatch of these documents at ME-13, 14 and 15 from Mapusa Branch to the Regional Manager. As regards the document at Sr. No. 8 the Party I was required to give details of the correspondence between the branch or disciplinary authority and the employees who were allegedly playing carom with the Party I. As regards the document at Sr. No. 9 the Presiding Officer was directed to make available the muster roll for 4-4-90 and 22-10-90. The records indicate that on 12-8-92 the Presenting Officer had stated that the proof of dispatch of documents of at ME-13, 14 and 15 was not available the Presenting Officer had further stated that there was no correspondence between the branch or Regional authority and the employees who were playing carom. The Presenting Officer had produced the document at Sr. No. 10 being the muster roll for 4-4-90 and 22-10-99. The enquiry cannot be said to have been vitiated merely because the Party I was not furnished copies of certain documents sought by him. The Party I was required to prove that the management had withheld production of relevant documents and that the same has prejudiced his defence. Needless to state that the Party I has not adduced any evidence to show that the Party I was in possession of the said documents at Sr. Nos. 6 and 8 and

had deliberately withheld the same. The Party I has also not shown the relevancy of the other documents at Sr. Nos. 5, 7 and 10, which were held to be irrelevant documents by the enquiry officer. The Party I has also not proved that non production of the said documents has prejudiced his defence. This being the case the enquiry cannot be said to have been vitiated on account of non-furnishing of documents.

22. The Party I had alleged that the enquiry officer was biased, however he has not adduced any evidence to substantiate the said allegation and in the absence of such evidence the enquiry cannot be said to have been vitiated.

23. The records indicate that the Party I was issued a charge-sheet wherein the charges were specifically stated. The enquiry officer had also given opportunity to the Party I to defend himself by a representative of his choice. The charges were explained to the Party I and in view of the admission of charge 1 the management was directed to adduce evidence in respect of other charges. The witnesses of the management were examined in presence of the Party I and he was given sufficient opportunity to cross-examine the witnesses. The enquiry officer had also given opportunity to the Party I to give his statement in defence and examine his witnesses. The enquiry officer had thus conducted the enquiry in compliance with the principles of natural justice. Hence the enquiry is held to be just and fair. This being the case the issue no. 2 answered in the negative.

24. Issue No. 3 : As stated earlier, one of the charges against the Party I was that he had misutilised the loan amount availed by him under Vehicle Loan Scheme. The said charge is held to be proved in view of the admission of the Party I. As it has been held above the Party I had admitted the said charge after having understood the charges levelled against him and as such the Party II was not required to adduce any further evidence in proof of the said charge. Reliance is placed on the decision of the apex court in the case of Chairman and M.D. V.S.P. V/s GSP Hari Babu reported in 2008 II CLR 338 and in the case of Central Bank of India Ltd., V/s K. Benerjee reported in AIR 1968 SC 226. Be that as it may, the records indicate that the Party I had availed from the Party II loan of Rs. 10,400 for purchase of scooter under Vehicle Loan Scheme. The letter dated 2-11-1989 Ex. ME-7, produced in the enquiry proceedings at Ex. E-1 wholly indicates that there was an increase in price of the vehicle and the Party I was insisting on delivering the vehicle at the old price which was not agreed by the vehicle dealer. The said letter indicates that on 20-7-89, after exchanging certain correspondence, the dealer had refunded to the Party I an amount of Rs. 11,239 being the advance of Rs. 10,400 and the interest thereon. The letter at Exb. ME-8 along with the statement of account at Exb. 9 indicates that the said cheque for Rs. 11,239 was encashed on 2-8-89. It is also pertinent to note that by

letter dated 10-4-90 (ME-10) the Party I had informed the bank that he has refused to pay the increased price and that he has taken the matter with M/s Bajaj Auto Ltd., requesting it either to deliver the vehicle at the old price or to cancel its booking. The Party I had stated that in case of cancellation he would close the loan account and apply for loan for new vehicle and if the same was not possible he would pay the balance loan amount in stipulated installment. This letter at ME-10 was evidently written after having encashed the cheque for Rs. 11,239 issued by Auto Service. The Party I had not informed the bank about the encashment of the said cheque but had claimed that the matter was still pending for consideration with M/s Bajaj Auto Limited. It was only after being served with a notice dated 25-4-90 that the Party I in his reply dated 16-6-90 admitted that he had deposited the cheque issued by the dealer in his savings account. In the said letter the Party I had stated that he had only committed a technical mistake and there was no ill intention of defrauding the bank. The Party I had tendered his apology for the inconvenience caused to the bank and requested that he should be pardoned. Thus in the reply dated 16-6-90 the Party I had admitted that the amount which was refunded by Auto Service was deposited in his personal account and that he had not refunded the same till the issue of show cause notice dated 25-4-90. The admission made by the Party before the enquiry officer is in consonance with the admission in the said reply. Considering all these factors there can be no doubt that the admission was clear, unequivocal and unambiguous and sufficient to prove the charge of misuse of loan amount.

25. The enquiry officer has also held that the management has proved that the Party I had failed to observe superiors' advice and to adhere to the office discipline and has thereby held the charge no. 6 as proved. In order to prove this charge the management had examined MW-1 R. R. Kunder. This witness had stated before the enquiry officer that he was working as Joint Manager Mapusa branch from 4-4-88 to 4-4-91. He has deposed that as far as office decorum was concerned the Party I used to give scant respect to him as a Joint Manager. He has deposed that whenever there was any discussion on the staff matter the Party I used to intervene and shout at him in presence of other staff members. He has deposed that the said behaviour was not conducive to office discipline. It is to be noted that the above statement was neither denied nor was this witness cross-examined on the said statement. The aforesaid statement was also corroborated by Shri J. B. Mendes (MW-2) this witness has also deposed that whenever he used to question the Party I about his behaviour the Party I used to tell him that he did not care. He has deposed that the office discipline was adversely affected because of such behaviour of the Party I. In his cross-examination he has stated that as a senior branch manager he has received humiliating treatment from the

Party I. He has deposed that the Party I used to give arrogant replies in presence of other customers. Both these witnesses are senior officers of the bank and had on reason to make any false allegations against the Party I. Their evidence indicates that the Party was guilty of insubordination and in my considered view the evidence of these witnesses is sufficient to prove the charge no. 6 levelled against the Party I. Hence charges no. 1 and 6 are held to be proved to the satisfaction of the Tribunal. These acts which constitute charges at Sr. Nos. 1 and 6 are unbecoming of a bank employee. Issue No. 3 is therefore answered in the affirmative.

26. **Issue No. 4 :** This issue pertains to the legality and justifiability of the penal action taken by the Party II against the Party I. I am conscious of the fact that the Parties were not called upon to adduce evidence on this issue. In my considered opinion it is not necessary to lead any further evidence and give findings on this issue as in view of the findings given in issue no. 1, it is clear that the dispute is not espoused by an union and since the dispute is not covered under Section 2A of the Act, this Tribunal has no jurisdiction to entertain and to grant relief in an individual dispute. Even otherwise the pleadings in the claim statement indicate that the penalty imposed is challenged mainly on the ground that the charges against the Party I are not proved. This contention is already negated in an answer to the issue no. 3. The penalty imposed is also not harsh or disproportionate to the proved charges. This being the case the Party I is not entitled for any reliefs.

Under the circumstances and in view of discussion supra, I pass the following.

ORDER

It is hereby held that the Party I has failed to prove that the dispute is espoused by the union. It is further held that the enquiry conducted against the Party I is fair and proper and the charges of misuse of loan amount and insubordination are held to be proved. Since the dispute is not espoused by an union and is not covered under Section 2A of the Act, this Tribunal has no jurisdiction to entertain the reference and to grant the reliefs sought by the Party I.

No order as to cost. Inform the Government accordingly.

Dated 14-3-2009

Panaji, Goa

ANUJA PRABHUDESSAI, Presiding Officer

नई दिल्ली, 1 मई, 2009

का. आ. 1419.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार युनाइटेड कर्मशियल बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, गुवाहाटी, असम के पंचाट (संदर्भ संख्या 8/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-4-2009 को प्राप्त हुआ था।

[सं. एल-12011/1/2007-आई आर (बी-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 1st May, 2009

S.O. 1419.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 8/2007) of the Central Government Industrial Tribunal, Guwahati, Assam now as shown in the Annexure, in the Industrial Dispute between the employees in relation to the management of United Commercial Bank and their workman, which was received by the Central Government on 29-4-2009.

[No. L-12011/1/2007-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

PRESENT:

Sri D. K. Deb Roy, M.A. LL.B., Presiding Officer

In the matter of an Industrial Dispute between :

The Management of United Commercial Bank

V/s

The Workmen Sri Harendra Chandra Das and Shri Siba Prasad Chakrabarty.

Ref. Case No. 08 of 2007

APPEARANCES

For the Management: None appeared.

For the Workmen : Sri D. C. Kakati,
Dy. General Secretary,
U. C. Bank Employees
Association.

Date of Award : 3-3-2009

AWARD

1. The present Reference case is arising out of Government Notification No. L-12011/1/2007-IR (B-II) dated 26-6-2007 to adjudicate the following issue :

SCHEDULE

“Whether the action of United Commercial Bank management in imposing punishment of ‘Reduction of basic pay to lower stage by two stages for two

years and will not earn increment of pay during the period of such reduction. On expiry of the period, the reduction will have the effect of postponing the future increment of his pay’s on Shri Harendra Chandra Das, Teller, Agartala Branch and Shri Siba Prasad Chakrabarty, Assistant Head Cashier, Agartala Branch initially, which was later on changed as ‘be brought down to lower stage in the scale of pay by two stages’ vide Disciplinary Authority letter No. ROG/PAD/MISC/3033/2005-06 dated 29-11-2005 is justified or not? If not, justified, to what relief the workmen are entitled?’

2. Notice was duly served upon the parties. From the Record it is seen that Dinesh Chandra Kakoti, Dy. General Secretary, United Commercial Bank Employees’ Association appeared before the Court on 18-9-2007 on behalf of the workmen and thereafter remained absent.

3. The Management has not turned up though notice has been served on him. Due to non appearance of the Management the matter was brought to the notice of Ministry of Finance, Department of Economic Affairs, Banking Division, Jeevan Deep Building, New Delhi. But surprisingly no action was taken by the Finance Department. Several dates were granted to the parties but they did not turn up. It is thus, abundantly clear that the parties are not interested to go ahead with the proceeding. Hence the matter stands dropped.

4. Prepare the award and send it to the Government in accordance with the law.

D. K. DEB ROY, Presiding Officer

नई दिल्ली, 1 मई, 2009

का. आ. 1420.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 164/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-4-2009 को प्राप्त हुआ था।

[सं. एल-12011/117/2001-आई आर (बी-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 1st May, 2009

S.O. 1420.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 164/2001) of the Central Government Industrial Tribunal, Lucknow, now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 29-4-2009.

[No. L-12011/117/2001-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

Present : N. K. Purohit, Presiding Officer

I. D. No. 164/2001

Ref. No. L-12011/117/2001-IR(B-II) dated : 10-10-2001

BETWEEN

The General Secretary
UB Bank Workers Organization,
3/13, Mathura Nagar,
Aligarh (U.P.)-202001
(Espousing case of Shri Alok Kumar)

AND

The Regional Manager
Punjab National Bank,
Regional Office,
Bulandshahr (U.P.)- 203001

AWARD

9-4-2009

1. By order No. L-12011/117/2001-IR (B-II) dated 10-10-2001 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the General Secretary, UB Bank Workers Organization, 3/13, Mathura Nagar, Aligarh (Espousing case of Shri Alok Kumar) and the Regional Manager, Punjab National Bank, Regional Office, Bulandshahr for adjudication.

2. The reference under adjudication is :

“Whether the action of the management of Punjab National Bank, Bulandshahr in terminating the services of Shri Alok Kumar, Ex-sub staff w.e.f. 25-10-2000 is legal and justified? If not, what relief the concerned workman is entitled to?”

3. The case of the workman, Shri Alok Kumar in brief is that he was temporarily appointed as peon by the manager of the Pahasu Branch of the Punjab National Bank, and no appointment letter was given to him for the same. The workman has claimed that he worked continuously for 30 months with full satisfaction to the bank management but was neither given wages as per pay scale for subordinate employees of the bank nor was made permanent in spite of his repeated request. The workman has alleged that on 25-10-2000, all of sudden his services were terminated, orally by the branch manager without assigning any reasons thereof. The workman has submitted that during his engagement with the bank he discharged all duties of sub-staff which were assigned to him by the branch manager from time to time, these included opening

and cleaning of the branch, serving drinking water to the customers, providing of pass-books to the customers and maintenance of a register in this regard, preparation of dispatch and service of dispatch, all other works outside the bank apart from bringing cash from post office and other banks as per direction of the branch manager were performed by the workman. The workman has alleged that the management in sheer disregard to the Rules instead of paying him full wages and making him permanent, has terminated his services. Thus, he has prayed he be given arrears of pay w.e.f. 1998 as subordinate staff in the Bank.

4. The management of the Punjab National Bank has denied the claim of the workman and has submitted that there existed no employer and employee relationship between Bank and the workman as it never appointed the workman in any capacity neither temporarily nor permanently. In this regard the Bank has submitted that it has specified Rules for recruitment of subordinate cadre and the workman was neither appointed in terms of the said Rules nor the Branch Manager was the Competent Authority for appointment in subordinate cadre. It has specifically mentioned by the management of the Bank that the workman was engaged by the Pahasu branch of the bank for some casual work for certain period and for which he was paid as per agreed rates and since he was never appointed in the Bank's services the question of payment of full salary or his confirmation in the Bank's service does not sustain. The management of the Bank has categorically denied the claim of the workman regarding duties performed by him and has stated that the workman never performed the duties as alleged by him such as opening of the branch or cleaning of bank premises. It has been accepted by the Bank that at certain occasions the services of the workman were utilized for purchasing stationary items and bringing the proceeds of NSCs/Kisan Vikas Patras from the Post Office. Regarding making entries in Saving Pass Book issue register the Bank has submitted that it was unauthorizedly done by the workman by misusing his acquaintance with the branch staff and his access to the bank records. Thus, the Bank management has prayed that the claim of the workman be rejected since there existed no relationship of employer and employee between the workman and the management of the Bank.

5. The workman has filed its rejoinder wherein apart from reiterating the facts stated by him in the statement of claim he has opposed the contentions of the management that there existed no relationship of employer and employee between the workman and the management of the Bank and has contended that there existed such relationship.

6. The parties have filed documents in support of their respective cases. The workman has examined himself and Sh. Vinod Kumar Sharma & Dev Dutt Sharma as witness whereas the management of the Bank has examined Sh. K. S. Agarwal, Branch Manager and Sh. D. K. Verma,

Dy. Manager. The parties have filed written argument apart from making oral submissions.

7. Heard arguments of learned representative of the parties and perused evidence on record.

8. The learned representative of the workman has argued that workman had worked continuously for 30 months as a Peon. There is ample documentary evidence on the record to support the statement of the workman. It is evident from the copies of Pass Book Received Register, Cash Credit Vouchers and Register of Cheques Return, Despatch Register etc. that workman had worked as a Peon and not as a water boy. He has further argued that since the workman had worked for more than 240 days, his disengagement on 25-10-2000 is in violation of provision of Section 25F of the I.D. Act. In support of his argument he has relied on 1988 (57) FLR (SC) 218 Narotam Chopra Vs. Presiding Officer, Labour Court and 1981 2nd LLJ (SC) page 70 Mohan Lal Vs. Bharat Electrical Ltd.

9. Per contra, the learned representative on behalf of the management has argued that the workman was working as water boy. He was engaged by the Pahasu branch for fetching water to be stored in the container in the bank for staff members and customers as there was no provision of the drinking water in the branch premises and for that he has been compensated as per agreed rates. He has also argued that name of the workman was not sponsored by the Employment Exchange and no post for peon was published and no appointment letter was issued to the workman. No procedure or rules provided for the appointment of the peon were followed and above facts have been admitted by the workman. He has further argued that signature of the bank employees are not required on Despatch Register or Pass Book Register. The workman had made his signature in the registers with ulterior motive. He has also argued that statement of the workman's witness Sri V. K. Sharma, retired Post Master and Sri Dev Dutt Sharma, retired teacher are not reliable. In support of his arguments he has relied on 1997 (I) CLR (SC) 190 Union of India Vs. Bishambar Dutt.

10. I have given my thoughtful consideration on the argument advanced by learned representative of both the sides.

11. The workman has stated in his statement on oath that he had worked from April 1998 to 25th Oct. 2000 for 30 months in Pahasu branch of Punjab National Bank as sub-staff and the bank used to pay only Rs. 300 p.m. He has further alleged that his services have been terminated orally without assigning any reason or notice. In cross-examination he has admitted that his name was not sponsored by the Employment Exchange and post was never advertised. He has further admitted that he did not give any application for the post and the then Manager Sri

Misra engaged him orally. No appointment letter was issued to him. He has further stated that no written order for termination was given to him only a certificate Ex. 1 (Document 4/2) was issued to him. He has denied that he was engaged for filling water or as a water boy but has stated that he used to serve water to staff and customers and besides this, he was performing all types of other work of the bank as peon.

12. Workman's witness Sri Dev Dutt Sharma, retired teacher, has deposed that he used to visit bank, in connection with his account and he has seen the workman there working as peon. Sri V. K. Sharma, retired Post Master, has also stated that workman used to visit post office for receiving dak of the bank, for registry and for receiving payment of the NSC on the basis of authority letter issued by the bank. He has further stated that the workman used to work as Peon.

13. In rebuttal, the management witness Sri K. S. Agarwal, Manager has stated that the workman was never appointed in any capacity by the bank Sri Satya Narain and Bhagwan Prasad were already working as sub-staff at Pahasu branch therefore there was no need to engage the workman as sub-staff. He has further stated that the workman was engaged purely for casual work for filling of water etc. as and when required for which necessary payment used to be made at agreed rates. The workman never served water to the staff or customers. He has also stated that even for any casual work, the workman was never remained engaged continuously for 240 days during any 12 months. He has alleged that the workman had access to the premises and he has unauthorisedly made certain entries in the record of the bank, which is apparent from certain documents filed by him.

14. The management witness Sri D. K. Verma, the then Asstt. Manager at Pahasu branch has stated that the workman had never worked for 240 days continuously at Pahasu branch. He has also stated that since the workman was known to the staff members and had access to the record of the bank, he has misused this opportunity for unauthorised entries in various registers. In cross-examination he has admitted that except g/164 (Document 4/171) Cash Voucher, the payment of the vouchers g-26, 28, 36, 69, 70, 75, 88, 98, 104, 105, 107, 108, 125, 126, 127, & g- 174 (document Nos. 4/34, 4/36, 4/44, 4/77, 4/78, 4/83, 4/96, 4/106, 4/112, 4/113, 4/115, 4/116, 4/132, 4/133, 4/134, & 4/181 respectively) Cash Vouchers have been made to the workman and said vouchers have been passed by him. He has further admitted that some of the entries in Pass Book Received Register H1 to H24 (Document 4/197 to 4/219) have been made by the workman. He has further admitted signature of the workman as a Peon on document 1/10 (Document 4/229). On being confronted him with documents C-4/5 and D-4/5 admitted that authority to bring cash was given to the workman by the then Manager. He has further admitted signature of himself and the workman

on the copies of Despatch Register I-16, 22, 33, 35, 52 and 54 (Document 4/235, 4/241, 4/252, 4/254, 4/271 & 4/273 respectively).

15. It is not disputed that Certificate (Ex. I) (Document 2/3) document 2/3 has been issued by the then Manager, Pahasu branch wherein it is stated that the workman had been associated with Pahasu branch as water boy for last two & half years. It has been admitted in the written statement that above certificate issued by the Branch Manager indicates workman's association with the Pahasu branch as water boy only and the branch had casual arrangement with him for fetching drinking water to be stored in the container in the branch. Thus, association of the workman with the bank for 30 months has not been denied by the bank.

16. The question thus arises for consideration is as to whether workman had worked as water boy or he was working as Peon during the said period. In support of his claim workman has filed as many as 277 documents to show that he had worked as peon not as a water boy. He has filed photo copies of the following documents;

1. 2/4 to 2/11 pass book issue register.
2. 2/12 cash credit voucher dt. 29-7-99.
3. 4/4 authority for payment of K. V. Patra to Post Master dt. 21-7-98 wherein Bank Manager attested the signature of the workman for payment of the same.
4. 4/5 letter of the Manager of branch to the Post Master dt. 12-8-99 wherein signature of the workman has been attested for giving him the payment of NSC.
5. 4/6 returned cheques register.
6. 4/7 group photographs of workman with staff members.
7. 4/8 to 4/196 copies of cash credit vouchers of different dates of the year 1999 and 2000.
8. 4/197 to 4/219 passbook received register.
9. 4/220 to 4/274 despatch register of the year 1999 and 2000.
10. 4/275 to 4/277 suspense account register.
11. 4/278 to 4/284 canteen register.

17. The photo copies of Credit Cash Vouchers 4/8 to 4/196 and Suspense Document Register 4/275 to 4/284 have been admitted remaining documents except document 4/7 copy of the photograph of the staff members have been admitted but the contents therein have been disputed by the management of the Bank.

18. As per averments made in the written statement it is not denied that entries in the passbook issue register have been made by the workman. Although, it is alleged that said entries have been made unauthorisedly. It has also been admitted that the workman was asked on certain occasions for purchasing stationery items from market for the Branch.

19. The management witness Sri K. S. Agarwal, Manager has not mentioned particulars of the record wherein alleged unauthorised entries have been said to be made by the workman. In cross examination he has stated as under :

मेरे सामने आलोक कुमार ने कितने दिन काम किया, नहीं मालूम मुझे याद नहीं है कि आलोक कुमार को रोज डाक लगाने के लिए सस्पेंस एकाउण्ट से पैसा दिया गया मुझे मालूम नहीं है कि आलोक कुमार ने पास-बुक बनाई है या डिस्पैच में काम किया है मुझे यह नहीं ज्ञात कि आलोक कुमार कभी अन्य काम करता था

20. Similarly, management witness Sri D. K. Verma has also admitted in his cross-examination that photo copies of Cash Vouchers g/26, 28, 36, 69, 75, 88, 98, 104, 105, 107, 108, 125, 126, 127 and g/174 bear his signatures and the signatures of the workman. He has also admitted that some entries in Pass Book Received Register H/1 to H/24 are in the handwriting of the workman. He has further admitted that copies of the Despatch Register I-10 bears signature of the workman as peon. He has also admitted that document C-4 and D-4 are letters written by the then Manager for bringing cash and the workman has been authorised to bring cash. He has further admitted that documents I-16, 22, 33, 35, 52 & I-54 bear his signatures as well as signatures of the workman.

21. Thus, the aforementioned admitted facts in the statement of the Bank's witnesses and documentary evidence adduced by the workman in support of his statement falsify the version of the Bank's management that the workman was engaged purely for casual work of filling of water as and when required. The statement of the workman that during the period of 30 months, he has worked as casual labour and performed various function as a Peon finds support, from the oral evidence of other witnesses produced by him also from the evidence of the witnesses produced by the opposite party and documentary evidence on the record.

22. In view of the above discussion, it is proved that workman had worked more than 240 days as daily wager during preceding 12 months from date of alleged termination.

23. In 1981 (II) LLJ (SC) page 71 and 1988 (57) FLR (SC) page 216 cited by the learned representative on behalf of the workman hon'ble Apex court has observed that termination of services without compliance of provision of section 25F of the I.D. Act is illegal. In 1997 (I) CLR (SC)

190 cited by the learned representative on behalf of the management the respondents were appointed on part time basis and their claim for regularization was allowed by the concerned Tribunal therefore, Hon'ble Apex Court observed that unless they are appointed on regular post in accordance with the rules the direction issued by the Tribunal for regularization is illegal.

24. Admittedly, in the instant case the management has not given any notice or compensation as required under Section 25F of the I.D. Act. It is well settled legal position that in case of daily wager if he had worked for 240 days in a calendar year, his services can not be dispensed with without following procedure under Section 25F of the I.D. Act.

25. In 2008 (119) FLR 877 Deepak Ganpat Tari V. N. E. Theater Pvt. Ltd. Hon'ble Bombay High Court relying on the Hon'ble Apex Court's judgment in 2008 (117) FLR 1086 (SC) AP V. Brahmandandam 2008 (118) FLR 376. (SC) Telephone DM vs Keshab Deb 2006 (111) FLR 1178 (SC) JDA V Ram Sahai, while awarding compensation of Rs. 15000 to the concerned workman considering his daily wages as Rs. 45 & in view of the fact that the workman had put in about 3 years of service, has observed as under :

"It is apparent that termination of services of a daily wager does not amount to retrenchment and for

violation of Section 25-F in such circumstances, the employee cannot be given benefit of reinstatement with continuity and back wages. Hon. Apex Court has held that in such circumstances employee is entitled to benefit of compensation only."

26. In the light of principle laid down in aforementioned case laws the ends of justice would meet by paying compensation to the workman instead and in place of relief of reinstatement in service. having regards to these facts that the workman had worked as casual labour and he was getting Rs. 300 per month at the time of alleged termination and keeping in view the entire facts of the case, the interest of justice would subserved, if, management is directed to pay lum-sum amount of compensation only. Accordingly the management is directed to pay a sum of Rs. 12,000 (Twelve Thousand only) to the workman as compensation for termination of his services in violation of Section 25F of the I.D. Act. The said amount shall be paid to the workman within 8 weeks of publication of the award failing which the same shall carry interest @ 8% per annum.

27. The reference is answered accordingly.

28. Award as above.

Lucknow

N. K. PUROHIT, Presiding Officer